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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

[NRC–2021–0026]

RIN 3150–AK60

Revisions to Reprocessing Plant Components for Export

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its export regulations pertaining to the illustrative list of reprocessing plant components under the NRC's export licensing authority. This final rule is necessary to conform the export controls of the United States to the international export control guidelines of the Nuclear Suppliers Group, of which the United States is a member. These changes will align the NRC's requirements with the current version of the International Atomic Energy Agency's (IAEA) document, ''Guidelines for Nuclear Transfers'' (INFCIRC/254/Part 1/Revision 14).

DATES: This final rule is effective on July 27, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0026 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0294. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.*
- *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.*
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lauren Mayros, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9088; email: *Lauren.Mayros@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The purpose of this final rule is to revise the NRC's export regulations in part 110 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Export and Import of Nuclear Equipment and Material,'' to conform the export controls of the United States to the international export control guidelines of the Nuclear Suppliers Group (NSG), of which the United States is a member. The NSG is a group of like-minded countries that seek to contribute to the nonproliferation of nuclear weapons through the implementation of guidelines for nuclear exports and nuclear-related exports. As a participating government in the NSG, the United States has committed to controlling export items on the NSG control lists. Participating governments are charged with implementing the changes adopted to the list as soon as possible after approval. The NSG Guidelines can be found at: *www.nuclearsuppliersgroup.org.*

This final rule conforms the NRC's export regulations in 10 CFR part 110 with recent changes to the NSG Guidelines for Nuclear Transfers. These changes are necessary in order to align appendix I to 10 CFR part 110, ''Illustrative List of Reprocessing Plant Components Under NRC Export Licensing Authority,'' with the changes made to Annex B of the NSG Guidelines for Nuclear Transfers, entitled ''Plants for the reprocessing of irradiated fuel elements, and equipment especially designed or prepared therefore.'' The NRC has determined that these changes are consistent with current U.S. policy, and will pose no unreasonable risk to the public health and safety or to the common defense and security of the United States.

II. Summary of Changes

10 CFR Part 110

The recent NSG changes were made to Section 3 of Annex B of the Part 1 Guidelines, entitled ''Plants for the reprocessing of irradiated fuel elements, and equipment especially designed or prepared therefore,'' which covers reprocessing plants and equipment and, specifically, different types of equipment used to open the fuel cladding surrounding uranium fuel. The first set of changes were made to paragraph 3.1 of Section 3, entitled ''Irradiated fuel element chopping machines.'' The entry was amended with new text that is more neutral in clarifying precisely how the fuel element is de-cladded to expose the irradiated nuclear fuel for further processing. The old text focused on chopping machines (guillotine-like blades that cut the fuel rod into shorter pieces without removing the actual cladding). The new text makes it clear that other methods can be used to de-clad fuel. The second set of changes were made to paragraph 3.2 of Section 3, entitled ''Dissolvers.'' This amendment broadens the description of the referenced dissolvers. The old text was focused on ensuring criticality safety exclusively through controlling the geometry of the tanks. The new language clarifies that the tanks are not necessarily made safe by geometry alone. Other physical means and process controls can be used to ensure safety.

The corresponding changes to 10 CFR part 110 will be made to appendix I, entitled ''Illustrative List of Reprocessing Plant Components Under NRC Export Licensing Authority.'' Paragraph 3.1 changes to the NSG Part 1 Guidelines will be made to paragraph (1) of appendix I, and Paragraph 3.2 changes to the NSG Part 1 Guidelines will be made to paragraph (2) of appendix I. Since the appendix I entries of 10 CFR part 110 exactly match the Section 3 entries of the NSG Part 1 Guidelines, the changes to 10 CFR part 110 will be made exactly as they were

implemented in the NSG Part 1 Guidelines.

III. Rulemaking Procedure

Because this rule involves a foreign affairs function of the U.S., the notice and comment provisions of the Administrative Procedures Act do not apply (5 U.S.C. 553(a)(1)), and good cause exists to make this rule immediately effective upon publication. The effective date for those entities who receive actual notice of this rule is the date of receipt of this rule.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), which categorically excludes from environmental review any amendments to 10 CFR part 110. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act

This final rule does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0036.

VI. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VII. Regulatory Analysis

This final rule revises appendix I to 10 CFR part 110 to conform to the NRC's changes to Annex B. There is no alternative to amending the regulations for the export of nuclear equipment and material. Therefore, the NRC did not develop a regulatory analysis for this final rule. This final rule is expected to have no changes in the information collection burden or cost to the public.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

IX. Backfitting and Issue Finality

The NRC has determined that a backfit analysis is not required for this rule, because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter I.

X. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a ''major rule'' as defined by that act.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110:

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for part 110 continues to read in part as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170h, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

* * * * *

■ 2. In appendix I to part 110, revise paragraphs (1) and (2) to read as follows:

Appendix I to Part 110—Illustrative List of Reprocessing Plant Components Under NRC Export Licensing Authority

* * * * *

(1) Irradiated fuel element decladding equipment and chopping machines.

Remotely operated equipment especially designed or prepared for use in a reprocessing plant and intended to expose or prepare the irradiated nuclear fuel assemblies, bundles, or rods for processing. This equipment cuts, chops, shears, or otherwise breaches the cladding of the fuel to expose the irradiated nuclear material for processing or prepares the fuel for processing. Especially designed cutting shears are most commonly employed, although advanced equipment, such as lasers, peeling machines, or other techniques, may be used. Decladding involves removing the cladding of the irradiated nuclear fuel prior to its dissolution.

(2) Dissolvers.

Dissolver vessels or dissolvers employing mechanical devices especially designed or prepared for use in a reprocessing plant, intended for dissolution of irradiated nuclear fuel and which are capable of withstanding hot, highly corrosive liquid, and which can be remotely loaded, operated and maintained.

Dissolvers normally receive the solid, irradiated nuclear fuel. Nuclear fuels with cladding made of material including zirconium, stainless steel, or alloys of such materials must be decladded and/or sheared or chopped prior to being charged to the dissolver to allow the acid to reach the fuel matrix. The irradiated nuclear fuel is typically dissolved in strong mineral acids, such as nitric acid, and any undissolved cladding removed. While certain design features, such as small diameter, annular, or slab tanks may be used to ensure criticality safety, they are not a necessity. Administrative controls, such as small batch size or low fissile material content, may be used instead. Dissolver vessels and dissolvers employing mechanical devices are normally fabricated of material such as low carbon stainless steel, titanium or zirconium, or other high-quality materials. Dissolvers may include systems for the removal of cladding or cladding waste and systems for the control and treatment of radioactive off-gases. These dissolvers may have features for remote placement since they are normally loaded, operated, and maintained behind thick shielding.

* * * * *

Dated: July 21, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2021–15922 Filed 7–26–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0054; Airspace Docket No. 20–AGL–34]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes T–322, T–392, T–403, and T–405; Central United States.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes area navigation (RNAV) routes T–322, T–392, T–403, and T–405 in the central United States. The new RNAV routes expand the availability of RNAV coverage in support of transitioning the National Airspace System (NAS) from ground-based to satellite-based navigation. Additionally, a portion of the new RNAV routes provide enroute structure where VHF Omnidirectional Range (VOR) Federal airway segments were removed due to the decommissioning of Sioux City, IA; Park Rapids, MN; and Huron, SD, VORs, in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV routes in the central United States and improves the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0054 in the **Federal Register** (86 FR 12129; March 2, 2021), proposing to establish T–322, T–392, T–403, and T–405 to expand the availability of RNAV routing in support of transitioning the NAS from ground-based to satellite-based navigation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV T-routes listed in this document will be published subsequently in the Order.

Differences From the NPRM

In the NPRM published in the **Federal Register** for the action establishing T–322, the FAA mistakenly identified the Redwood Falls, MN, VOR/DME as ''RWD'' in the regulatory text section describing the proposed route. The correct identifier is ''RWF'' and is corrected in regulatory text of this rule.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV routes T–322, T–392, T–403, and T–405. This action is necessary in order to expand the availability of RNAV routing in support of transitioning the NAS from ground-based to satellite-based navigation. The new T-routes are described below.

T–322: T–322 is a new RNAV route that extends between the Rapid City, SD, VOR/Tactical Air Navigation (VORTAC) and the Redwood Falls, MN, VOR/Distance Measuring Equipment (VOR/DME). This T-route provides enroute routing overlaying VOR Federal airway V–26.

T–392: T–392 is a new RNAV route that extends between the MZEEE, IA, waypoint (WP) located near the Sioux City, IA, Tactical Air Navigation (TACAN) navigation aid and the GRSIS, MN, WP located near the Fairmont, MN, DME.

T–403: T–403 is a new RNAV route that extends between the GENEO, MN, WP located near the Darwin, MN, VORTAC and the BLUOX, MN, fix located 40 NM North of the Park Rapids, MN, DME. This T-route provides enroute routing adjacent to VOR Federal airway V–171 between the Darwin, MN, VORTAC and the Alexandria, MN, VOR/DME, and overlays VOR Federal airway V–175 between the Alexandria, MN, VOR/DME and the BLUOX, MN, fix.

T–405: T–405 is a new RNAV route that extends between the FIITS, SD, WP located near the Yankton, SD, VOR/DME and the GICHI, ND, WP located near the Devils Lake, ND, VOR/DME. This T-route provides enroute routing adjacent to VOR Federal airway V–159 between the Yankton, SD, VOR/DME and the Huron, SD, DME; enroute routing adjacent to VOR Federal airway V–15 between the Huron, SD, DME and the Aberdeen, SD, VOR/DME; and enroute routing adjacent to VOR Federal airway V–170 between the Aberdeen, SD, VOR/DME and the Devils Lake, ND, VOR/DME.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing RNAV routes T–322, T–392, T–403, and T–405, to expand the availability of RNAV routing in support of transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 et seq) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–322 Rapid City, SD (RAP) to Redwood Falls, MN (RWF) [New]

Rapid City, SD (RAP)	VORTAC	(Lat. 43°58′33.74″ N, long. 103°00′44.38″ W)
Philip, SD (PHP)	VOR/DME	(Lat. 44°03′29.66″ N, long. 101°39′51.10″ W)
Pierre, SD (PIR)	VORTAC	(Lat. 44°23′40.40″ N, long. 100°09′46.11″ W)
DAKPE, SD	WP	(Lat. 44°25′58.37″ N, long. 098°42′23.05″ W)
Redwood Falls, MN (RWF)	VOR/DME	(Lat. 44°28′02.19″ N, long. 095°07′41.63″ W)

* * * * * * *

T–392 MZEEE, IA to GRSIS, MN [New]

MZEEE, IA	WP	(Lat. 42°20′40.66″ N, long. 096°19′24.54″ W)
KAATO, IA	WP	(Lat. 42°35′06.89″ N, long. 095°58′53.08″ W)
BERRG, IA	WP	(Lat. 43°08′17.21″ N, long. 095°10′46.46″ W)
GRSIS, MN	WP	(Lat. 43°38′45.54″ N, long. 094°25′21.17″ W)

T–403 GENEO, MN to BLUOX, MN [New]

GENEO, MN	WP	(Lat. 45°05′15.37″ N, long. 094°27′14.30″ W)
Alexandria, MN (AXN)	VOR/DME	(Lat. 45°57′30.20″ N, long. 095°13′57.48″ W)
Park Rapids, MN (PKD)	DME	(Lat. 46°53′53.34″ N, long. 095°04′15.21″ W)
BLUOX, MN	WP	(Lat. 47°34′33.13″ N, long. 095°01′29.11″ W)

T–405 FIITS, SD TO GICHI, ND [New]

FIITS, SD	WP	(Lat. 42°55′06.67″ N, long. 097°23′06.31″ W)
Mitchell, SD (MHE)	VOR/DME	(Lat. 43°46′37.28″ N, long. 098°02′15.28″ W)
DIDDL, SD	WP	(Lat. 44°26′24.32″ N, long. 098°18′39.06″ W)
Aberdeen, SD (ABR)	VOR/DME	(Lat. 45°25′02.48″ N, long. 098°22′07.39″ W)
Jamestown, ND (JMS)	VOR/DME	(Lat. 46°55′58.34″ N, long. 098°40′43.57″ W)
FARRM, ND	FIX	(Lat. 47°29′14.17″ N, long. 099°01′34.50″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)

Issued in Washington, DC, on July 21, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–15838 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1071; Airspace Docket No. 20–ACE–13]

RIN 2120–AA66

Amendment of V–175 and V–586; Establishment of T–397; and Revocation of V–424 in the Vicinity of Macon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–175 and V–586; establishes Area Navigation (RNAV) route T–397; and removes VOR Federal airway V–424 in the vicinity of Macon, MO. The Air Traffic Service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Macon, MO, VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). With the exception of RNAV route T–397, the Macon VOR/DME NAVAID provides navigation guidance for portions of the affected air traffic service (ATS) routes. The VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–1071 in the **Federal Register** (85 FR 81431; December 16, 2020), amending VOR Federal airways V–175 and V–586; establishing RNAV route T–397; and removing VOR Federal airway V–424 in the vicinity of Macon, MO. The proposed amendment, establishment, and revocation actions were due to the planned decommissioning of the VOR portion of the Macon, MO, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) and RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying VOR Federal airways V–175 and V–586; establishing RNAV route T–397; and removing VOR Federal airway V–424. The planned decommissioning of the VOR portion of the Macon, MO, VOR/DME has made this action necessary.

The VOR Federal airway changes are outlined below.

V–175: V–175 extends between the Malden, MO, VOR/Tactical Air Navigation (VORTAC) and the Des Moines, IA, VORTAC; and between the Worthington, MN, VOR/DME and the Alexandria, MN, VOR/DME. The airway segment overlying the Macon, MO, VOR/DME between the Hallsville, MO, VORTAC and the Kirksville, MO, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–424: V–424 extends between the Napoleon, MO, VORTAC and the Macon, MO, VOR/DME. The airway is removed in its entirety.

V–586: V–586 extends between the intersection of the Kansas City, MO, VORTAC 077° and Napoleon, MO, VORTAC 005° radials (EXCEL fix) and the Joliet, IL, VORTAC. The airway segment overlying the Macon, MO, VOR/DME between the intersection of the Kansas City, MO, VORTAC 077° and Napoleon, MO, VORTAC 005° radials (EXCEL fix) and the Quincy, IL, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

The RNAV T-route is outlined below.

T–397: T–397 is a new route that extends between the Walnut Ridge, AR, VORTAC and the Waterloo, IA, VOR/DME. This RNAV route mitigates the loss of the V–175 airway segment noted above and provides RNAV routing capability between the Walnut Ridge, AR, area and the Cedar Falls, IA, area.

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

Regulatory Notices and Analyses

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

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airways V–175 and V–586; establishing RNAV route T–397; and removing VOR Federal airway V–424, due to the planned decommissioning of the VOR portion of the Macon, MO, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–175 [Amended]

From Malden, MO; Vichy, MO; to Hallsville, MO. From Kirksville, MO; to Des Moines, IA. From Worthington, MN; Redwood Falls, MN; to Alexandria, MN.

* * * * *

V–424 [Removed]

* * * * *

V–586 [Amended]

From Quincy, IL; Peoria, IL; Pontiac, IL; to Joliet, IL.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–397 Walnut Ridge, AR (ARG) to Waterloo, IA (ALO) [New]

Walnut Ridge, AR (ARG)	VORTAC	(Lat. 36°06′36.07″ N, long. 090°57′13.30″ W)
Vichy, MO (VIH)	VOR/DME	(Lat. 38°09′14.66″ N, long. 091°42′24.38″ W)
LEWRP, MO	WP	(Lat. 40°08′06.06″ N, long. 092°35′30.15″ W)
OHGEE, IA	FIX	(Lat. 40°49′06.04″ N, long. 093°08′24.11″ W)
LACON, IA	FIX	(Lat. 41°08′23.43″ N, long. 093°24′09.22″ W)
Des Moines, IA (DSM)	VORTAC	(Lat. 41°26′15.45″ N, long. 093°38′54.81″ W)
Waterloo, IA (ALO)	VOR/DME	(Lat. 42°33′23.39″ N, long. 092°23′56.13″ W)

* * * * *

Issued in Washington, DC, on July 20, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–15835 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0119; Airspace Docket No. 21–AEA–3]

RIN 2120–AA66

Amendment and Establishment of Class E Airspace; York, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface airspace at York Airport, York, PA. An airspace evaluation of the area determined the additional airspace is necessary to accommodate operations at the airport. This action also updates the name of York Airport (formerly York County Airport). This action also establishes Class E airspace extending upward from 700 feet above the surface at York Airport and Class E airspace extending upward from 700 feet above the surface for Wellspan York Hospital Heliport, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 24795, May 10, 2021) for Docket No. FAA–2021–0119 to amend Class E surface airspace at York Airport and establish Class E airspace for York Airport and Wellspan York Hospital Heliport, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport.

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

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA amends 14 CFR part 71 by amending Class E surface airspace at York Airport, York, PA. An airspace evaluation of the area determined the additional airspace is necessary to accommodate operations at the airport. This action also updates the name of York Airport (formerly York County Airport). This action also establishes Class E airspace extending upward from 700 feet above the surface at York Airport and Wellspan York Hospital Heliport to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the heliport.

Subsequent to publication of the Notice of Proposed Rulemaking, the FAA found the spelling of Wellspan York Hospital Heliport was incorrect. This action corrects the error. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA PA E2 York, PA [Amended]

York Airport, PA
(Lat. 39°55′01″ N, long. 76°52′23″ W)
That airspace extending upward from the surface within a 6.8-mile radius of the York Airport.

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

* * * * *

AEA PA E5 York, PA [New]

York Airport, PA
(Lat. 39°55′01″ N, long. 76°52′23″ W)
Wellspan York Hospital Heliport, PA
(Lat. 39°56′41″ N, long.76°43′06″ W)
That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of York Airport, and within 4.0 miles each side of the 339° bearing from the airport, extending from the 9.3-mile radius to 11.9 miles northwest of the airport, and that airspace extending upward from 700 feet above the surface within a 6-mile radius of Wellspan York Hospital Heliport.

Issued in College Park, Georgia, on July 21, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–15921 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 224

[212D0102DR/DS5A300000/DR.5A311.IA000118]

RIN 1076–AF65

Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published on May 24, 2021, updating regulations governing Tribal Energy Resource Agreements (TERAs) between the Secretary of the Interior (Secretary) and Indian Tribes. The interim final rule added the statutory requirement that that any application for a Tribal Energy Development Organization (TEDO) be submitted by the Tribe and corrected cross-references.

DATES: This rule is effective July 27, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

This final rule updates TERA regulations that BIA published on December 18, 2019 (84 FR 69602), under the authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, as amended by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, 25 U.S.C. 3501–3504, Public Law 115–325, and 25 U.S.C. 2 and 9. The rule addressed the requirements of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (2017 Amendments), including establishing a process and criteria for TEDOs to obtain certification from the Secretary so that they may enter into leases, business agreements, and rights-of-way with Tribes on Tribal land without Secretarial approval. *See* Section 103(b) of the 2017 Amendments.

The 2019 regulation stated at § 224.202 that a TEDO must submit an application. The statute, however, states that the Tribe submits the application for certification of a TEDO. *See* 25 U.S.C. 3504(h)(1). This final rule corrects the regulation at § 224.202 to provide that a Tribe must submit the application.

This final rule also corrects typographical errors in the cross-references to paragraphs in § 224.53, as follows:

- In paragraph (a)(3), the cross-reference is corrected to be paragraph (b), rather than paragraph (c);
- In paragraph (a)(5), the cross-reference is corrected to be paragraph (c) rather than paragraph (d); and
- In paragraph (b), the cross reference is corrected to be paragraph (a)(3) rather than paragraph (a)(6).

On May 24, 2021 (86 FR 27806), BIA published an interim final rule making these changes and announced the opportunity to comment by June 23, 2021. BIA received no comments on the interim final rule, so this final rule adopts the interim final rule as published without change.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563)

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

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

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule makes minor corrections.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only agreements entered into by Tribes and the Department. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it does not have substantial direct effects on federally recognized Indian Tribes because the Department consulted on substantive requirements of the rule that is in effect, and this rule merely makes minor corrections to that substantive rule.

I. Paperwork Reduction Act

OMB Control No. 1076–0167 currently authorizes the collections of information contained in 25 CFR part 224. This rule does not affect those collections of information.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

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

List of Subjects in 25 CFR Part 224

Agreement, Appeals, Application, Business agreements, Energy development, Interested party, Lease, Reporting and recordkeeping requirements, Right-of-way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

■ The interim final rule amending 25 CFR part 224 which was published at 86 FR 27806 on May 24, 2021, is adopted as final without change.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–15929 Filed 7–26–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0131]

RIN 1625–AA87

Security Zone, Christina River, Newport, DE

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone for certain waters of the Christina River to prevent waterside threats and incidents for persons under the protection of the United States Secret Service (USSS) as they transit by vehicle on the route 141 bridge over the Christina River near Newport, Delaware. The security zone will be enforced intermittently and only during times of a protected person transit over the bridge. Vessel traffic will be restricted while the zone is being enforced. This rule will prohibit persons and vessels from entering or remaining within the security zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective July 27, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0131 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 Edmund Ofalt, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, *Edmund.J.Ofalt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Since January of 2021 the United States Secret Service (USSS) has routinely requested, pursuant to authorities listed in 18 U.S.C. 3056, the Coast Guard to implement a security zone in the vicinity of the 141 bridge over the Christina River near Newport, Delaware. Between January 1, 2021, and July 20, 2021, the waterside security zone around the 141 bridge has been requested fourteen times. In response to these frequent requests the Coast Guard published a notice of proposed rulemaking (NPRM) on April 5, 2021, titled ''Security Zone; Christina River, Newport, DE'' (86 FR 17565). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to recurring transists of persons protected by the USSS across the 141 bridge in Newport, Delaware. During the comment period that ended May 5, 2021, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 70011(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during USSS protectee transits over the route 141 bridge over the Christina River near Newport, Delaware. The Coast Guard will activate the security zone when requested by the USSS for the protection of persons the USSS protects under 18 U.S.C. 3056 or pursuant to Presidential memorandum. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), as delegated by Department of Homeland Security Delegation No.00170.1(II)(70), Revision No. 01.2, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captains of the Port. The Captain of the Port Delaware Bay (COTP) has determined that recurring transits of persons under the protection of the USSS, which started in January of 2021, present a potential target for

terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Due to the roadway passing over the Christina River, this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of Comments, Changes, and the Rule

A. Discussion of Comment

As noted above, we received one comment on our NPRM published April 5, 2021. The commenter made several points unrelated to this regulation.

First, the commenter suggested alternate modes of travel, such as Marine One, for those persons protected by the USSS, and expressed concern about potential delays to landside vehicular traffic. The Coast Guard does not direct movements of USSS protectees. The Coast Guard cannot change the travel routes or methods of USSS protectees. The USSS is tasked with providing the highest level of security for those it protects and has requested the Coast Guard's assistance at this location. Accordingly, we have established this security zone, in consultation with, and at the request of the USSS.

In addition, the commenter questioned the cost-impact of the rule. The commenter has suggested that the rule would exceed $100 million. We disagree with the commenter's statement. The costs of providing protection to USSS protectees is beyond the scope of this rule. The Coast Guard's responsibility within this rule is to secure the route 141 bridge over the Christina River near Newport, Delaware and a portion of the waterway extending from both sides of the route 141 bridge. The Coast Guard has assessed the economic impact of this rule and has concluded the impacts to recreational vessels to be minimal. We, therefore, disagree with the commenter's suggested economic cost—impact of this rule to be in excess of $100 million.

B. Changes From the NPRM

We made no changes to the NPRM related to comments submitted. However, we removed the use of the term ''VIP'' and replaced it with the term ''persons protected by the United States Secret Service'' to provide greater precision with this regulation and the authorities granted to the USSS by 18 U.S.C. 3056. In paragraph (b), the definition section, we have removed the term ''Very Important Person'' (VIP) and added in its place ''USSS protectee.''

C. The Rule

This rule establishes a security zone for the protection of persons protected by the USSS under 18 U.S.C. 3056 or pursuant to Presidential memorandum as they transit by vehicle on the route 141 bridge over the Christina River near Newport Delaware. This rule is necessary to expedite the establishment and enforcement of this security zone when short notice is provided to the COTP for persons protected by the USSS traveling over the route 141 bridge. The security zone is bounded on the east by a line drawn from 39°42.55′ North Latitude (N), 075°35.88′ West Longitude (W), thence southerly to 39°42.50′ N, 075°35.87′ W proceeding from shoreline to shoreline on the Christina River in a westerly direction where it is bounded by the South James Street Bridge at 39°42.63′ N, 075°36.53′ W. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (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.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A combined regulatory analysis (RA) and Regulatory Flexibility Analysis follows.

This rule will establish a security zone around the route 141 bridge, which crosses over the Christina River near Newport, Delaware. The approximate size of the security zone extends along the river for 0.64 miles with a width of approximately 77 yards shore-to-shore. The security zone will be established 1 hour prior to the USSS protectee landing in the nearby airport. Prior to the 1 hour enforcement, the COTP will issue a broadcast via VHF–FM channel 16 allowing vessel traffic time to transit out of the enforcement area.

In order to enforce this rule, the Coast Guard will station Coast Guard personnel at the borders of the security zones with the authority to manage boaters' movement through the security zone. Recreational boaters wanting to transit the area may inquire directly with the Coast Guard personnel (or other Federal, state, and local agencies assisting the Coast Guard in enforcement of this rule) posted at the boundaries of the security zones, rather than being required to contact the COTP for access to transit the area. In addition, once USSS and the USSS protectee are transiting towards the security zone, the zone becomes a restricted area and Coast Guard personnel will prohibit boaters from operating within the security zones.

TABLE 1—SUMMARY OF RULE'S ANTICIPATED IMPACTS

Category	Summary
Potential affected population	Since this waterway is not federally maintained, the Coast Guard does not have data on the amount of boaters that utilize this portion of the river, and as a result are unable to provide quantitative data pertaining to these boaters. However, the Coast Guard anticipates that those affected will be small recreational vessels that are capable navigating the shallow waters of the river.
Costs	The costs associated with this rule, is the loss of leisure time that boaters will encounter while waiting for the USSS protectee to transit across the security zone.
Benefits	This rule will secure an area that meets the objectives of the USSS to maintain USSS protectees safe.

Affected Population

The Coast Guard does not collect data on the vessels and individuals using the waterway, since the waterway is not federally maintained. However, the Coast Guard is able to the surmise the type of vessel traffic by studying the navigational chart that encompass the security zone. From the navigational chart the Coast Guard is able to discern the water depth to be 1 to 8 feet deep, and vertical clearance (by observing the fixed bridges along the waterway) to range between 22 to 28 feet. Therefore, the Coast Guard concludes that the type of vessels most likely using the waterway are recreational boaters.

Observable throughout Google maps, there is one access point, a boat ramp, located a few hundred yards from the route 141 bridge. During the enforcement of the security zone, local authorities will be restricting boater access to the river. As mentioned above, since this waterway is not federally maintained, the Coast Guard does not have data on the number of boaters that utilize this portion of the river; however, according to subject matter experts, the amount of traffic using this section of the river is minimal.

Costs

Once the security zone is implemented, the Coast Guard anticipates that recreational boaters transiting the waterway may have a very brief conversation with Coast Guard officials stationed at both ends of the security zone. If access to transit is granted, recreational boaters would then proceed through the security zone (without stopping or loitering) and exit the security zone in a timely manner. We anticipate that this conversation would last between 15 and 30 seconds per recreational boater. Because we do not know the number boats, or how many recreational boaters are on the average boat and because of how small the amount of interaction per recreational boaters is likely to be, we are unable to anticipate total quantitative impacted burden these conversations will have on the affected population.

In addition, during the actual transit of the USSS protectee crossing the route 141 bridge, all waterway traffic along the security zone will be halted. Since the USSS controls the movement of the USSS protectee, the Coast Guard is unable to discern the length of time the security zone will be closed once the USSS protectee is moving. Given the length of the bridge, the Coast Guard anticipates the length of time the security zone will be restrictive to be several minutes while the USSS protectee transits through the security zone.

Although the Coast Guard is unable to obtain information about the frequency of boaters using the waterway, the Coast Guard was able to assess the rate by which leisure time is computed, and that rate comes to $15.80 per hour. The elements used to tabulate leisure wage is outlined in the DOT travel time guidance document.[1] We also used the census information the obtain the median household income for the state of Delaware.[2] The DOT travel time guidance document provided the methodology for determining leisure time. Even though the document is assessing surface travel, we accept the methodology used in the document as a good approximation for determining recreational boater's leisure time.

TABLE 2—SUMMARY OF LEISURE WAGE TABULATED

	Description	Values
Median Household Income.	We obtained the income data for the State of Delaware from the census	$65,712
Reducing household income to hourly wage.	To determine the hourly wage, we divided the median household income by 2,080, which is the approximate annual number of hours worked in a year by an individual working a 40 hour work week.	$31.59
Value of Travel Time Savings (VTTS).	Is a ratio that measures an individual's willingness to pay to spend more time traveling. It is equal to 50% of the hourly wage rate.	50%
Total Leisure wage for Delaware.	Calculated by multiplying VTTS by the hourly wage	$15.80

The cost of the rule would be leisure rate multiplied by the amount of time boaters are prevented from enjoying their leisure time. Unfortunately, as mentioned above, the Coast Guard does not have information pertaining to the number of boaters using this waterway and, therefore, is unable assess total recreational boaters loss of leisure time for this rule. However, the Coast Guard is able to provide the per vessel (one individual boater per vessel) cost of this rule prior to fully restricting (100%) access to the security zone. The Coast Guard estimates interaction time between boaters and uniform personnel to average 23 seconds, for which we obtain an average per vessel cost of

[1] *https://www.transportation.gov/sites/dot.gov/files/docs/2015RevisedValueofTravelTimeGuidance.pdf.*

[2] *https://www.census.gov/library/visualizations/interactive/2019-median-household-income.html.* Published September 2020.

$0.11(= $15.80 leisure wage * .007 equivalent hours [3]). In addition, in order to estimate the cost associated when the full restriction of the security zone is implemented, we make the assumption that it will take 10 minutes for the USSS protectees to transit through the security zone. The Coast Guard estimates those cost to be $2.69 (=$15.80 leisure wage * .17 equivalent hours [4]). The combined costs of vessel-boater interaction with uniform personal is estimated at $2.80. Although the information of the population is limited, Coast Guard is confident that the overall costs of this rule is minimal.[5]

B. Impact on Small Entities

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone for the protection of USSS protectees as they transit the route 141 bridge over the Christina River near Newport, Delaware. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.560 to read as follows:

§ 165.560 Security Zone; Christina River, Newport, DE.

(a) *Location.* The following area is a security zone: All waters of the Christina River, from shoreline to shoreline bounded on the east by a line drawn from 39°42.55′ North Latitude (N), 075°35.88′ West Longitude (W), thence southerly to 39°42.50′ N, 075°35.87′ W thence along the Christina River in a westerly direction and bounded by the South James Street Bridge at 39°42.63′ N, 075°36.53′ W. These coordinates are based on North American Datum 83 (NAD83).

[3] To calculate the equivalent hours of 23 seconds, we divide 23 by 3600 (3600 is the number of seconds in one hours). Hence, 23 sec/3600 sec = .007 equivalent hour.

[4] Equivalent hour calculation for 10 min is 10 min/60 min = .17.

[5] The Coast Guard also estimated the round trip (arriving and leave Delaware using the same route) at $5.60 per vessel.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

USSS protectee means any person for whom the United States Secret Service (USSS) requests implementation of a security zone in order to supplement protection of said person(s).

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 13 or 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) *Enforcement.* This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of a USSS protectee traveling across the route 141 bridge in Newport, Delaware. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: July 23, 2021.

Jonathan D. Theel,

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

[FR Doc. 2021–16048 Filed 7–26–21; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: On May 28, 2021, the Postal Service published proposed price changes to reflect a notice of price adjustments filed with the Postal Regulatory Commission (PRC). The PRC found that price adjustments contained in the Postal Service's notification may go into effect on August 29, 2021. The Postal Service will revise Notice 123, *Price List* to reflect the new prices.

DATES: The revisions to Notice 123, *Price List,* are effective August 29, 2021.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On May 28, 2021, the Postal Service filed a notice with the PRC in Docket Number R2021–2 of mailing services price adjustments to be effective on August 29, 2021. On June 3, 2021, USPS® published a notification of proposed price changes in the **Federal Register** entitled ''International Mailing Services: Proposed Price Changes'' (86 FR 29732). The notification included price changes that the Postal Service would adopt for services covered by *Mailing Standards of the United States Postal* Service, International Mail Manual (IMM®) and publish in Notice 123, Price List, on Postal Explorer® at *pe.usps.com.* The Postal Service received no comments.

II. Decision of the Postal Regulatory Commission

As stated in the PRC's Order No. 5937, issued on July 19, 2021, in PRC Docket No. R2021–2, the PRC found that the prices in the Postal Service's notification may go into effect on August 29, 2021. The new prices will accordingly be posted in Notice 123, *Price List* on Postal Explorer at *pe.usps.com.*

III. Summary of Changes

First-Class Mail International

The price for a single-piece postcard will be $1.30 worldwide. The First-Class Mail International (FCMI) letter nonmachinable surcharge will increase to $0.30. The FCMI single-piece letter and flat prices will be as follows:

Letters				
Weight not over	Price groups			
(oz.)	1	2	3–5	6–9
1	$1.30	$1.30	$1.30	$1.30
2	1.30	1.96	2.43	2.25
3	1.83	2.60	3.55	3.20
3.5	2.36	3.25	4.68	4.14

Letters				
Weight not over	Price groups			
(oz.)	1	2	3–5	6–9
1	$2.60	$2.60	$2.60	$2.60
2	2.85	3.38	3.67	3.62
3	3.09	4.14	4.73	4.61
4	3.31	4.92	5.81	5.62
5	3.55	5.69	6.87	6.63
6	3.79	6.45	7.93	7.64

Letters				
Weight not over	Price groups			
(oz.)	1	2	3–5	6–9
7	4.03	7.23	9.00	8.64
8	4.27	7.99	10.06	9.64
12	5.45	9.64	12.20	11.73
15.994	6.63	11.31	14.33	13.80

International Extra Services and Fees

The Postal Service price increase for certain market dominant international extra services is as follows:

- Certificate of Mailing
- Registered Mail™
- Return Receipt
- Customs Clearance and Delivery Fee
- International Business Reply™ Mail Service

Certificate of Mailing	
	Fee
Individual pieces:	
Individual article (PS Form 3817)	$1.65
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.65
Firm mailing sheet (PS Form 3665), per piece (minimum 3)	
First-Class Mail International only	0.47
Bulk quantities:	
For first 1,000 pieces (or fraction thereof)	9.35
Each additional 1,000 pieces (or fraction thereof)	1.20
Duplicate copy of PS Form 3606	1.65

Registered Mail

Fee: $17.15.

Return Receipt

Fee: $4.75.

Customs Clearance and Delivery

Fee: per piece $7.05.

International Business Reply Service

Fee: Cards $1.75; Envelopes up to 2 ounces $2.25.

New prices will be listed in the updated Notice 123, *Price List.*

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2021–15958 Filed 7–26–21; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA–2019–0075, Notice No. 2]

RIN 2130–AC75

Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is revising its regulations governing changes to positive train control (PTC) systems and reporting on PTC system performance. First, recognizing that the railroad industry intends to enhance FRA-certified PTC systems to continue improving rail safety and PTC technology's reliability and operability, FRA is modifying the process by which a host railroad must submit a request for amendment (RFA) to FRA before making certain changes to its PTC Safety Plan (PTCSP) and FRA-certified PTC system. Second, to enable more effective FRA oversight, this final rule: Expands an existing reporting requirement by increasing the frequency from annual to biannual; broadens the reporting requirement to encompass positive performance-related information, including about the technology's positive impact on rail safety, not just failure-related information; and requires host railroads to utilize a new, standardized report form.

DATES: This final rule is effective August 26, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time and search for Docket No. FRA–2019–0075.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Deputy Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov;* or Stephanie Anderson, Attorney Adviser, telephone: 202–493–0445, email: *Stephanie.Anderson@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

Section 20157 of title 49 of the United States Code (U.S.C.) mandates each Class I railroad, and each entity providing regularly scheduled intercity

or commuter rail passenger transportation, to implement an FRA-certified PTC system on: (1) its main lines over which poison- or toxic-by-inhalation hazardous materials are transported, if the line carries five million or more gross tons of any annual traffic; (2) its main lines over which intercity or commuter rail passenger transportation is regularly provided; and (3) any other tracks the Secretary of Transportation (Secretary) prescribes by regulation or order.[1] By law, PTC systems must be designed to prevent certain accidents or incidents, including train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of trains through switches left in the wrong position.[2]

Currently, 35 host railroads—including 7 Class I railroads, 23 intercity passenger railroads or commuter railroads, and 5 Class II or III, short line, or terminal railroads—are directly subject to the statutory mandate.[3] The statutory mandate generally required that by December 31, 2020, FRA-certified and interoperable PTC systems must govern operations on all PTC-mandated main lines, currently encompassing nearly 58,000 route miles nationwide.[4] 49 U.S.C. 20157(a); 49 CFR 236.1005(b)(6)–(7).

On December 29, 2020, FRA announced that railroads had fully implemented PTC technology on all PTC-mandated main lines.[5] As of that date, railroads reported that interoperability[6] had been achieved between the applicable host railroads and tenant railroads that operate on PTC-mandated main lines, which included 209 interoperable host-tenant railroad relationships as of December 2020.[7] Furthermore, as required under 49 U.S.C. 20157(h), FRA approved each host railroad's PTCSP and certified that each PTC system[8] complied with the technical requirements for PTC systems under FRA's regulations.[9]

Through FRA's nine PTC Symposia and Collaboration Sessions, from 2018 to 2020, and other regular coordination with railroads implementing PTC systems, PTC system vendors and suppliers, and other stakeholders, FRA proactively identified aspects of FRA's existing PTC regulations that could impede either PTC-related innovation or FRA's oversight, after the statutory deadline of December 31, 2020. Accordingly, on December 18, 2020, FRA issued a Notice of Proposed Rulemaking (NPRM) to amend its PTC regulations to modify two regulatory provisions, 49 CFR 236.1021 and 236.1029(h), which, if not revised, would impede the industry's ability to advance PTC technology efficiently and FRA's ability to oversee the performance and reliability of PTC systems effectively.[10] FRA received seven sets of written comments in response to that NPRM, which were generally supportive of FRA's proposals. FRA responds to these seven sets of comments in Sections II (*Background and Public Participation*) and IV (*Section-by-Section Analysis*) of this final rule.

Based on the comments received, FRA is revising its PTC regulations in two ways. First, FRA is issuing this final rule to streamline the process under 49 CFR 236.1021 for RFAs to PTCSPs for FRA-certified systems. This revised RFA process requires host railroads to provide certain documentation, analysis, and safety assurances in a concise RFA. This final rule also establishes a 45-day deadline for FRA to review and approve or deny railroads' RFAs to their FRA-approved PTCSPs or FRA-certified PTC systems. In addition, this final rule permits host railroads utilizing the same type of PTC system to submit joint RFAs to their PTCSPs and PTC Development Plans (PTCDPs).

Second, FRA is expanding an existing reporting requirement—49 CFR 236.1029(h), *Annual report of system failures*—by increasing the frequency of the reporting requirement from annual to biannual; broadening the reporting requirement to encompass positive performance-related information, not just failure-related information; and requiring host railroads to utilize a new, standardized Biannual Report of PTC System Performance (Form FRA F 6180.152)[11] to enable more effective FRA oversight. In addition, FRA is amending § 236.1029(h) by updating the provision to use certain statutory terminology for consistency; clarifying the ambiguous filing obligation by specifying that only host railroads directly submit these reports to FRA; and explicitly requiring tenant railroads to provide the necessary data to their applicable host railroads.

FRA analyzed the economic impact of this final rule over a ten-year period and estimated its quantitative costs and benefits, which are shown in the table below. The business benefits associated with FRA's revisions to § 236.1021—*i.e.,* to simplify the process for all RFAs to PTCSPs and authorize host railroads to file joint RFAs to PTCSPs and PTCDPs—will outweigh the costs associated with FRA's expansion of the reporting requirement under paragraph (h) of § 236.1029. This final rule will also result in savings for the federal government.

[1] Rail Safety Improvement Act of 2008, Public Law 110–432, 104(a), 122 Stat. 4848 (Oct. 16, 2008), as amended by the Positive Train Control Enforcement and Implementation Act of 2015, Public Law 114–73, 129 Stat. 568, 576–82 (Oct. 29, 2015), and the Fixing America's Surface Transportation Act, Public Law 114–94, section 11315(d), 129 Stat. 1312, 1675 (Dec. 4, 2015), codified as amended at 49 U.S.C. 20157. *See also* Title 49 Code of Federal Regulations (CFR) part 236, subpart I.

[2] 49 U.S.C. 20157(g)(1), (i)(5); 49 CFR 236.1005 (setting forth the technical specifications).

[3] The infographics on FRA's PTC website (*https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc*) identify 41 railroads subject to the statutory mandate as of December 31, 2020, but six of those 41 railroads are tenant-only commuter railroads. As this final rule primarily focuses on requirements specific to host railroads, this final rule references the current number of PTC-mandated *host* railroads (35) and any host railroads that may either become subject to the statutory mandate or voluntarily implement PTC systems in the future. Section V (*Regulatory Impact and Notices*) estimates this final rule and FRA's PTC regulations in general will apply, on average, to 1.5 additional host railroads per year.

[4] Except a railroad's controlling locomotives or cab cars that are subject to either a temporary or permanent exception under 49 U.S.C. 20157(j)–(k) or 49 CFR 236.1006(b), *Equipping locomotives operating in PTC territory*.

[5] Federal Railroad Administration, FRA Announces Landmark Achievement with Full Implementation of Positive Train Control (Dec. 29, 2020), *available at* https://railroads.dot.gov/sites/fra.dot.gov/files/2020-12/fra1920.pdf.

[6] ''Interoperability'' is the general requirement that the controlling locomotives and cab cars of any host railroad and tenant railroad operating on the same main line must communicate with and respond to the PTC system, including uninterrupted movements over property boundaries, except as otherwise permitted by law. 49 U.S.C. 20157(a)(2)(A)(i)(I), (a)(2)(D), (i)(3), (j)–(k); 49 CFR 236.1003, 236.1006, 236.1011(a)(3).

[7] For purposes of FRA's PTC regulations, a host railroad is ''a railroad that has effective operating control over a segment of track,'' and a tenant railroad is ''a railroad, other than a host railroad, operating on track upon which a PTC system is required.'' 49 CFR 236.1003(b).

[8] Currently, the following PTC systems are in operation in the United States: (1) The Interoperable Electronic Train Management System (I–ETMS), which Class I railroads and many commuter railroads have fully implemented; (2) the Advanced Civil Speed Enforcement System II (ACSES II) or the Advanced Speed Enforcement System II (ASES II), the PTC system most railroads operating on the Northeast Corridor (NEC) have fully implemented; (3) Enhanced Automatic Train Control (E–ATC), which five host railroads have fully implemented; (4) the Incremental Train Control System, which the National Railroad Passenger Corporation (Amtrak) has fully implemented in parts of Michigan; and (5) the Communication Based Train Control (CBTC) system, which one commuter railroad has fully implemented.

[9] 49 CFR 236.1009, 236.1015.

[10] 85 FR 82400 (Dec. 18, 2020).

[11] A copy of the form is available in the rulemaking docket.

[12] Net Benefits = (Industry Business Benefits + Government Savings) − Industry Costs.

NET BENEFITS IN MILLIONS
[2019 Dollars]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Industry Costs	($1.52)	($1.75)	($0.22)	($0.21)
Industry Business Benefits	6.12	7.20	0.87	0.84
Government Savings	17.98	21.19	2.56	2.48
Net Benefits [12]	22.58	26.64	3.21	3.12

* **Note:** Table may not sum due to rounding.

In addition to the quantified benefits in the table above, FRA expects this final rule will also result in safety benefits for the railroad industry. For example, this final rule will enable railroads to deploy PTC-related safety improvements and technological advancements more efficiently and frequently, under an expedited RFA process, and the expanded reporting requirement will help railroads and FRA identify systemic failures more quickly and precisely, enabling swifter intervention and resolution.

II. Background and Public Participation

A. Legal Authority To Prescribe PTC Regulations

Section 104(a) of the Rail Safety Improvement Act of 2008 required the Secretary of Transportation to prescribe PTC regulations necessary to implement the statutory mandate, including regulations specifying the essential technical functionalities of PTC systems and the means by which FRA certifies PTC systems.[13] The Secretary delegated to the Federal Railroad Administrator the authority to carry out the functions and exercise the authority vested in the Secretary by the Rail Safety Improvement Act of 2008. 49 CFR 1.89(b).

In accordance with its authority under 49 U.S.C. 20157(g) and 49 CFR 1.89(b), FRA issued its first final PTC rule on January 15, 2010, which is set forth, as amended, under 49 CFR part 236, subpart I, *Positive Train Control Systems.*[14] FRA's PTC regulations under 49 CFR part 236, subpart I, prescribe ''minimum, performance-based safety standards for PTC systems . . . including requirements to ensure that the development, functionality, architecture, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those PTC systems will achieve and maintain an acceptable level of safety.'' 49 CFR 236.1001(a).

[13] Public Law 110–432, 122 Stat. 4848 (Oct. 16, 2008), codified as amended at 49 U.S.C. 20157(g).

[14] 75 FR 2598 (Jan. 15, 2010).

FRA subsequently amended its PTC regulations via final rules issued in 2010, 2012, 2014, and 2016.[15]

In this final rule, FRA revises three sections, 49 CFR 236.1003, 236.1021, and 236.1029, of FRA's existing PTC regulations pursuant to its specific authority under 49 CFR 1.89 and 49 U.S.C. 20157(g), and its general authority under 49 U.S.C. 20103 to prescribe regulations and issue orders for every area of railroad safety.

B. Public Participation Prior to the Issuance of the NPRM

FRA regularly engages with host railroads, tenant railroads, and PTC system vendors and suppliers, as part of FRA's oversight of railroads' implementation of PTC systems on the mandated main lines under 49 U.S.C. 20157 and the other lines where railroads are voluntarily implementing PTC technology. This included multiple PTC Collaboration Sessions in 2019 and 2020.[16] For a detailed discussion regarding these sessions and other public participation prior to FRA's issuance of the NPRM, please see Section II–B of the NPRM.[17] The provisions in this final rule are based on FRA's own review and analysis, industry's feedback in 2019 and 2020 before publication of the NPRM, and the comments received on the NPRM.

C. Introduction to Comments on the NPRM

FRA received seven sets of comments from several associations, railroads, and individuals in response to the NPRM FRA published on December 18, 2020.[18] FRA lists here the comments it received in reverse chronological order. On February 16, 2021, the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) jointly filed comments on behalf of themselves and their member railroads. On February 16, 2021, the American Public Transportation Association (APTA) submitted comments on behalf of itself, its member organizations, and the commuter rail industry. Furthermore, on February 16, 2021, Amtrak and New Jersey Transit (NJT) submitted their own respective comments, noting that they also support AAR and ASLRRA's jointly filed comments. On December 30, 2020, David Schanoes submitted two separate comments on the NPRM. On December 21, 2020, Patrick Coyle submitted comments. FRA thanks each commenter for the time and effort put into the comments.

As most comments FRA received are directed at a specific regulatory change FRA proposed in the NPRM, FRA discusses them in the appropriate portions of Section IV (*Section-by-Section Analysis*) of this final rule.

In this section, FRA discusses only comments generally applicable to this rulemaking and comments outside the scope of the rulemaking. In general, the comments expressed support for both of FRA's proposals in the NPRM. Several commenters also commended FRA for proposing changes to its oversight and regulation of PTC technology now that it has been fully implemented on all main lines currently subject to the mandate.

In its comments, APTA asserts that, as a general matter, FRA must justify each proposal of its NPRM separately, taking issue with FRA's acknowledgement in the executive summary of the NPRM that the costs associated with expanding the reporting requirement under § 236.1029(h) are outweighed by the savings or business benefits incurred by FRA's streamlining of § 236.1021. More specifically, APTA states that these issues should not be considered together, and FRA must justify each proposal separately on its own merits.

FRA agrees that it should independently justify each change to its PTC regulations, which FRA has done

[15] 75 FR 59108 (Sept. 27, 2010); 77 FR 28285 (May 14, 2012); 79 FR 49693 (Aug. 22, 2014); 81 FR 10126 (Feb. 29, 2016).

[16] All presentations from FRA's PTC Collaboration Sessions are available in FRA's eLibrary, including direct links on FRA's PTC website at *https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc.*

[17] 85 FR 82400, 82403–04 (Dec. 18, 2020).

[18] 85 FR 82400 (Dec. 18, 2020).

in Sections III (*Summary of the Main Provisions in the Final Rule*), IV (*Section-by-Section Analysis*), and V (*Regulatory Impact and Notices*) of this final rule. Consistent with FRA's approach in the NPRM, this final rule identifies and explains the need and basis for each change. Intended only as an overview, Section I (*Executive Summary*) summarizes the overall industry costs, business benefits, government savings, and net benefits of the final rule.

In addition, APTA's comments include a general request from the commuter rail industry for FRA to review its cost-benefit analysis associated with the changes to § 236.1029(h) FRA proposed in the NPRM. Accordingly, based on comments received, FRA thoroughly reviewed and updated its estimate of the increased burden associated with expanding the reporting requirement under § 236.1029(h), which FRA discusses in Section V (*Regulatory Impact and Notices*).

Also, FRA received several comments that are outside the scope of this rulemaking. Specifically, an individual commented that all federal agencies must step up their activities related to cybersecurity, noting that PTC technology is one area where FRA must proactively address cybersecurity needs. That comment acknowledges that a comprehensive attempt to addressing cybersecurity challenges would require a separate rulemaking. Although the comment is outside the scope of this rulemaking, FRA wants to note that its existing regulations establish security requirements for PTC systems under 49 CFR 236.1033, *Communications and security requirements,* including the requirement for all wireless communications between the office, wayside, and onboard components in a PTC system to provide cryptographic message integrity and authentication.[19] In addition, FRA notes that certain cybersecurity issues resulting in PTC system failures, defective conditions, or previously unidentified hazards are currently reportable under 49 CFR 236.1023, *Errors and malfunctions,* and cybersecurity issues resulting in initialization failures, cut outs, or malfunctions, will be reportable in the new Biannual Report of PTC System Performance (Form FRA F 6180.152) under 49 CFR 236.1029(h).

An individual also commented that FRA should expand the scope of 49 CFR 236.1023(b), *Errors and malfunctions,* to include third-party reports of software and firmware vulnerabilities. The comment rightfully observes that such a change is also outside the scope of this rulemaking, as the NPRM did not propose amending § 236.1023 and, therefore, this final rule does not address the substance of the comment.

III. Summary of the Main Provisions in the Final Rule

A. Establishing a New Process for Modifying FRA-Certified PTC Systems and the Associated PTCSPs

FRA's PTC regulations have always acknowledged that after ''implementation of a train control system, the subject railroad may have legitimate reasons for making changes in the system design,'' among other changes, including to a PTC system's functionality.[20] Indeed, FRA is aware that host railroads will need to deploy new PTC software releases, among other changes, to ensure their PTC systems are performing properly—for example, to fix certain bugs or defects or eliminate newly discovered hazards. In addition to incremental changes to PTC systems that are necessary for the continued safe and proper functioning of the technology, FRA understands that several railroads and PTC system vendors and suppliers have chosen to design and develop their PTC systems to perform functions in addition to the minimum, performance-based functions specified under the statutory mandate and FRA's regulations.

Currently, however, FRA's PTC regulations prohibit a railroad from making certain changes to its FRA-approved PTCSP or FRA-certified PTC system unless the railroad files an RFA to its PTCSP and obtains approval from FRA's Associate Administrator for Railroad Safety. 49 CFR 236.1021. Though FRA's existing regulations specify that FRA will, to the extent practicable, review and issue a decision regarding a host railroad's initially filed PTCSP within 180 days of the date it was filed, FRA's regulations do not currently specify an estimated timeline for reviewing and approving or denying railroads' subsequent RFAs to their PTCSPs.

Instead of the existing RFA approval process involving complex content requirements and an indefinite decision timeline, this final rule: (1) Requires railroads to comply with a streamlined RFA process, including providing certain documentation, analysis, and safety assurances; and (2) establishes a 45-day deadline for FRA's review and issuance of a decision. The improved process will enable the industry to implement technological enhancements more efficiently, and the clear timeline will help ensure a more predictable and transparent FRA review process going forward.

In addition, this final rule permits host railroads utilizing the same type of PTC system to submit joint RFAs to their PTCSPs and PTCDPs. Appreciating that changes to safety-critical elements, including software or system architecture, of a certain PTC system will likely impact multiple, if not most, railroads operating that same type of PTC system, FRA's final rule outlines a path for such host railroads to submit joint RFAs to their PTCSPs, with specific instructions under new paragraphs (l) and (m) of § 236.1021. FRA recognizes that modifying and simplifying the process for host railroads to submit RFAs to PTCSPs for FRA-certified PTC systems is necessary to facilitate required maintenance and upgrades to PTC technology and encourage railroads to enhance their PTC systems to continue to improve rail safety.

B. Expanding the Performance-Related Reporting Requirements

FRA's regulations currently require a railroad to submit an annual report by April 16th each year regarding the number of PTC system failures, ''including but not limited to locomotive, wayside, communications, and back office system failures,'' that occurred during the previous calendar year. 49 CFR 236.1029(h). The first failure-related annual reports pursuant to § 236.1029(h) were due on April 16, 2019, from the four host railroads whose statutory deadline was December 31, 2018, for the full implementation of a PTC system on their required main lines. FRA has found that the annual reports railroads submitted to date have been brief (*e.g.,* as short as half of a page) and included minimal information, but still technically satisfied the existing content requirements under § 236.1029(h).

Because the minimal information currently required under § 236.1029(h) does not permit FRA to monitor adequately the rate at which PTC system failures occur, or to evaluate improvements over time, FRA is revising § 236.1029(h) to enable FRA to perform its oversight functions effectively. Specifically, FRA is increasing the frequency of this reporting requirement from annual to biannual, which will enable FRA to monitor more closely trends in PTC system reliability. In addition, to ensure the data railroads submit under § 236.1029(h) are uniform, comparable,

[19] *See also* 49 CFR 236.1015(d)(20).

[20] 75 FR 2598, 2660 (Jan. 15, 2010).

and objective, FRA is revising this reporting requirement by specifying the exact types of statistics and information the reports must include.

Furthermore, FRA is amending § 236.1029(h) to make it consistent with the temporary reporting requirement under 49 U.S.C. 20157(j)(4), as the existing statutory and regulatory provisions use different terminology to describe PTC-related failures. As background, the Positive Train Control Enforcement and Implementation Act of 2015 established a reporting requirement that applies only temporarily, from October 29, 2015, to December 31, 2021.[21] On June 5, 2020, the Office of Management and Budget (OMB) approved the Statutory Notification of PTC System Failures (Form FRA F 6180.177, OMB Control No. 2130–0553),[22] which FRA developed in 2019, and then revised in 2020 based on feedback from AAR and APTA.[23] Host railroads must submit that form monthly to comply with 49 U.S.C. 20157(j)(4) until that temporary reporting requirement expires on December 31, 2021.[24]

FRA's new Biannual Report of PTC System Performance (Form FRA F 6180.152) under revised § 236.1029(h) will incorporate both: (1) The minimal information currently required under § 236.1029(h); and (2) the corresponding types of data railroads must submit until December 31, 2021, in their Statutory Notifications of PTC System Failures (Form FRA F 6180.177). Similarly, this final rule revises § 236.1029(h) to utilize the failure-related terms under 49 U.S.C. 20157(j)—initialization failures, cut outs, and malfunctions—instead of the broad, imprecise term currently used in § 236.1029(h) (''failures'').

Furthermore, during meetings FRA held before publication of the NPRM, railroads observed that, under existing § 236.1029(h), it is unclear whether a host railroad, a tenant railroad, or both must submit the required reports to FRA, as the existing provision uses only the word ''railroad.'' In this final rule, FRA resolves this ambiguity by specifying that only host railroads must directly submit these reports to FRA. In addition, new paragraph (4) under § 236.1029(h) requires each applicable tenant railroad that operates on a host railroad's PTC-governed main lines to submit the necessary information to each applicable host railroad on a continuous basis, which will enable host railroads to submit their Biannual Reports of PTC System Performance to FRA, on behalf of themselves and their tenant railroads.

FRA considers its changes to § 236.1029(h) necessary to enable FRA to monitor the performance and reliability of railroads' PTC systems effectively throughout the country.

IV. Section-by-Section Analysis

Section 236.1003 Definitions

FRA is adding three definitions to paragraph (b) of this section to help ensure that FRA and the railroad industry consistently interpret the failure-related terms under 49 U.S.C. 20157(j)—initialization failures, cut outs, and malfunctions—as FRA is now also using these corresponding terms in revised § 236.1029(h) and the associated Biannual Report of PTC System Performance (Form FRA F 6180.152). Specifically, as proposed in the NPRM, FRA's final rule generally adopts the definitions of these three terms that FRA currently utilizes in the Statutory Notification of PTC System Failures (Form FRA F 6180.177, OMB Control No. 2130–0553), which were, in part, revised and refined based on industry's feedback during the development of that corresponding form and the definitions therein.[25]

In its comments on the NPRM, APTA seeks FRA's confirmation that a specific type of failure should be categorized as either a cut out or a malfunction (*i.e.,* an *en route* failure), not an initialization failure. Specifically, APTA describes the following scenario: in a maintenance facility, before departing, a crew successfully initializes a PTC system on both ends of a push-pull train (the locomotive and the cab car), and the train successfully enters PTC-governed territory with the PTC system functioning properly. Subsequently, when the crew switches to operating the cab car (instead of the locomotive or vice versa), the PTC system then fails to activate properly.

APTA requests confirmation that FRA would *not* consider this type of failure an initialization failure, but instead an *en route* failure, either a cut out or a malfunction. FRA concurs with APTA's interpretation. Under these specific circumstances, the PTC system was successfully initialized on both the locomotive and the cab car of the push-pull train, and the subsequent failure should be categorized as either a cut out or a malfunction, depending on the underlying facts, per the definitions under § 236.1003(b).

In addition, APTA requests confirmation that if the state of a PTC system is either ''disengaged'' or ''failed,'' that state is categorized as a malfunction, not as a cut out, under FRA's definitions of those terms. FRA concurs with that interpretation. FRA's understanding is that if a PTC system conveys it has ''disengaged'' or ''failed,'' it is likely due to a failure in the communications network or elsewhere in the system, and it would be categorized as a malfunction, not a cut out.

FRA received one comment requesting a change to its proposed definition of ''malfunction.'' [26] Regarding FRA's proposed definition of ''malfunction,'' an individual suggested that FRA should add the following clause to the end of the definition: ''or any indication of unauthorized system access or other indicators of compromise described by system suppliers or vendors.'' FRA's proposed definition of ''malfunction'' in the NPRM was ''any instance when a PTC system, subsystem, or component fails to perform the functions mandated under 49 U.S.C. 20157(i)(5), this subpart, or the applicable host railroad's PTCSP.''

FRA declines to add the requested clause to the end of the definition of ''malfunction'' for two reasons. First, host railroads have become accustomed to collecting data using the exact definition of ''malfunction'' FRA proposed in the NPRM, as FRA developed that definition with industry's feedback during its establishment of the Statutory Notification of PTC System Failures (Form FRA F 6180.177). Second, FRA's proposed definition of ''malfunction'' already captures certain instances that the commenter describes. For example, if a person or entity interferes with a PTC system, subsystem, or component to the point that the technology fails to perform the functions mandated under 49 U.S.C. 20157(i)(5), FRA's PTC regulations, or the applicable host railroad's PTCSP, that would fall squarely within the definition of ''malfunction.''

This final rule adopts the three definitions FRA proposed of ''cut out,'' ''initialization failure,'' and ''malfunction'' in the NPRM, with one modification. In the clause that refers to a person cutting out a PTC system in the definition of ''cut out,'' FRA is adding

[21] 49 U.S.C. 20157(j).

[22] *Available at https://safetydata.fra.dot.gov/PTCSystemFailuresFRAForm177/.*

[23] For additional detail, please see 84 FR 72121 (Dec. 30, 2019) and 85 FR 15022 (Mar. 16, 2020).

[24] *See also* 49 U.S.C. 20157(j)(4) and (e)(1) (authorizing DOT to assess civil penalties for any violation of the statutory mandate).

[25] *See* 84 FR 72121, 72125 (Dec. 30, 2019); 85 FR 15022, 15025–26 (Mar. 16, 2020).

[26] FRA did not receive any comments requesting a change to its proposed definition of ''initialization failure'' or ''cut out.''

the qualifying phrase ''with authorization'' to the definition in the final rule, which will help avoid the impression that trains crews may cut out a PTC system without first following the applicable procedures in the governing FRA-approved PTCSP and/or the railroad's own operating rules. Other than the addition of those two words for clarification, this final rule adopts the three definitions FRA proposed in the NPRM.

Section 236.1021 Discontinuances, Material Modifications, and Amendments

In general, the purpose of existing paragraphs (a) through (d) is to prohibit a railroad from making changes, as defined by this section, to a PTC system, PTC Implementation Plan (PTCIP), PTCDP, or PTCSP, unless the railroad submits an RFA, with the content requirements under existing paragraphs (d)(1) through (7), and obtains approval from FRA's Associate Administrator for Railroad Safety.

In its comments, APTA states that § 236.1021 will present an undue burden to its members if FRA broadly interprets the types of changes (often referred to as ''material modifications'') that require a host railroad to file an RFA under § 236.1021(h). Consistent with FRA's statements in the NPRM, this rule does not revise the types of changes that trigger the filing of an RFA under existing paragraphs (h)(1) through (4) or the exceptions currently set forth under § 236.1021(i)–(k). The types of changes that relate specifically to this final rule because they impact a host railroad's PTCSP and/or the underlying FRA-certified PTC system are the specific changes identified under existing paragraphs (h)(3) and (4)—*i.e.,* a proposed modification of a safety-critical element of a PTC system or a proposed modification of a PTC system that affects the safety-critical functionality of any other PTC system with which it interoperates.

FRA previously advised railroads about the scope of these terms, including common examples, during FRA's PTC Collaboration Sessions and in FRA's individual letters to railroads approving their PTCSPs and certifying their PTC systems. FRA remains available to answer questions about whether a specific type of change might trigger the requirement to file an RFA under existing § 236.1021(h). However, as this final rule does not revise the list of qualifying changes under existing § 236.1021(h)(1)–(4) or the exceptions currently set forth under § 236.1021(i)–(k), FRA will handle such inquiries on a case-by-case basis and not in this rule.

In addition, an individual commented that FRA should add a fifth type of change to existing paragraph (h), which FRA is not revising in this rulemaking. Specifically, the individual comments that FRA should add the following provision to the list of changes that trigger the filing of an RFA: ''(5) Any change in PTC component software or firmware.'' Even if FRA were amending the list under § 236.1021(h)(1)–(4), such an addition would be unnecessary as relevant changes to software or firmware are already covered within existing paragraphs (h)(3) and (4).[27] For example, this final rule recognizes that certain software changes trigger the requirement to file an RFA under § 236.1021, and FRA refers to relevant software changes in Sections II (*Background and Public Participation*), III (*Summary of the Main Provisions in the Final Rule*), and IV (*Section-by-Section Analysis*), as well as new paragraph (m)(2)(ii) under § 236.1021, which requires an RFA to include any associated software release notes.

In general, FRA's revisions to § 236.1021 in this final rule are intended primarily to streamline the *process* by which host railroads must submit RFAs to their FRA-approved PTCSPs and FRA-certified systems, based on FRA's recognition that the railroad industry intends to update and enhance FRA-certified PTC systems to advance rail safety.[28] Accordingly, FRA's revisions to the process under existing paragraphs (a), (c), and (d) are limited to removing any references to PTCSPs or PTC systems from those paragraphs, as this final rule establishes a new, streamlined process for RFAs associated with FRA-approved PTCSPs and FRA-certified PTC systems under new paragraphs (l) and (m). In addition to removing references to PTCSPs from existing paragraphs (a), (c), and (d), this final rule removes paragraph (d)(7) in its entirety, and incorporates the general principle of paragraph (d)(7) into a new proposed paragraph, (m)(2)(i), as discussed below.

In this final rule, under new paragraph (l), FRA permits host railroads utilizing the same type of PTC system to submit joint RFAs to their PTCSPs and PTCDPs, as those are system-based documents, albeit with some railroad-specific variances. FRA expects that host railroads will utilize this joint RFA option to the extent practicable, and it will efficiently leverage the industry's resources, help ensure coordination among railroads operating the same types of PTC systems, and reduce the number of similar or identical RFA filings host railroads submit to FRA for review and approval.[29] Because changes to safety-critical elements, including software or system architecture, of a certain PTC system will likely impact multiple, if not most, railroads implementing that same type of PTC system, this final rule outlines a path for such host railroads to submit joint RFAs to their PTCSPs, with specific instructions under new paragraphs (l) and (m). FRA recognizes that many host railroads participate in system-specific committees or working groups to ensure they maintain PTC system interoperability, among other objectives. FRA considers it acceptable for an association, committee, or working group to submit a joint RFA under paragraph (l), but such a joint RFA must be explicitly on behalf of two or more host railroads, and each host railroad must sign the filing.

New paragraph (l) also specifies that only host railroads with the same PTC System Certification classification under 49 CFR 236.1015(e) may file a joint RFA to their PTCSPs. In its comments, APTA expresses general support for this provision, noting that many APTA members will benefit from this flexibility, especially railroads whose I–ETMS systems FRA has certified as mixed PTC systems. APTA further explains both that its members are ''small organizations with limited staff, funding, and resources,'' and that railroads operating ACSES II/ASES II, E–ATC, or non-vital, overlay I–ETMS systems may not benefit from this provision to the same extent.

In the NPRM, FRA acknowledged that while new paragraph (l) provides the same flexibility for *all* host railroads operating *all* types of PTC systems, some groups of railroads might be better positioned to begin filing joint RFAs immediately. Though this final rule generally authorizes host railroads, utilizing the same type of PTC system, to file RFAs to their PTCSPs jointly, FRA expects this aspect of the final rule,

[27] That is, proposed modifications to safety-critical elements of PTC systems or proposed modifications to a PTC system that affect the safety-critical functionality of any other PTC system with which it interoperates.

[28] For additional detail and background, please see the NPRM and Sections I (*Executive Summary*) and III–A (*Establishing a New Process for Modifying FRA-certified PTC Systems and the Associated PTCSPs*) of this final rule.

[29] The current set of PTC-mandated host railroads have fully implemented five types of PTC systems, though FRA acknowledges that, in several cases, railroads implemented PTC systems of the same type in different manners (*e.g.,* variances in design, functionality, and operation). This has required, and will continue to require, railroads to conduct additional testing and gap analyses to achieve and sustain interoperability, including configuration management.

in the short term, primarily to impact host railroads implementing I–ETMS and E–ATC because each respective I–ETMS and E–ATC system is similar to others of the same type, with a baseline functionality.[30] Conversely, there is not a uniform standard or specification currently underlying the ACSES II or ASES II PTC systems that host railroads have implemented on the NEC. In addition, there is an array of ACSES II suppliers, including for the onboard, wayside, and communications subsystems. In the future, however, as the ACSES II railroads finish establishing the Interoperable Change Management Plan they are currently developing and finalizing, it is possible that at least some of the host railroads utilizing ACSES II or ASES II will elect to submit joint RFAs to their respective PTCSPs for certain system-wide changes, consistent with the option under new paragraphs (l) and (m) of § 236.1021.

In short, FRA welcomes joint RFAs from any group of host railroads utilizing the same type of PTC system with the same certification classification, as new paragraph (l) states. FRA remains available to provide technical assistance to any railroads that have questions about this provision and how to utilize the flexibility therein.

Here is an example to help explain the practical effect of new paragraph (l). When an RFA is necessary under § 236.1021 to account for certain proposed changes to railroads' I–ETMS PTCSPs, or I–ETMS itself, FRA expects a joint RFA from the set of host railroads whose I–ETMS is certified as a non-vital, overlay PTC system under § 236.1015(e)(1), and a joint RFA from the set of host railroads whose I–ETMS is certified as a mixed PTC system under § 236.1015(e)(4). Two distinct RFAs are necessary under these circumstances, as the impact of the proposed change(s) must be analyzed in the context of the underlying safety analysis in the FRA-approved PTCSPs—a safety analysis that is structured differently based on whether FRA has certified the PTC system as a non-vital, overlay system; a vital, overlay system; a standalone system; or a mixed system.

Furthermore, with respect to joint RFAs, new paragraph (l) specifies that, though most types of information required under new paragraph (m)(2) may be submitted jointly in the RFA, a joint RFA must include the written confirmation and statement specified under new paragraphs (m)(2)(iii) and (iv), as described below, from each host railroad that is a signatory to the joint RFA.

In this final rule, FRA outlines, in new paragraph (m), the mandatory, three-step process a host railroad must follow to make changes to its FRA-certified PTC system and the associated FRA-approved PTCSP. FRA intends the process under paragraph (m) to apply to *all* changes necessitating an RFA under existing paragraphs (h)(3) and (4) of this section—*i.e.,* proposed changes to safety-critical elements of PTC systems and proposed changes to a PTC system that affect the safety-critical functionality of any other PTC system with which it interoperates. For brevity, FRA will refer to these changes as changes to safety-critical elements of PTC systems, as that is sufficiently broad for purposes of paragraph (m).

New paragraph (m)(1) requires a host railroad to revise its PTCSP to account for each proposed change to its PTC system, and summarize such changes in a chronological table of revisions at the beginning of its PTCSP. FRA retains its authority to request a copy of a host railroad's governing PTCSP in accordance with 49 CFR 236.1009(h), *FRA access,* and 49 CFR 236.1037, *Records retention.* FRA did not receive any comments on new paragraph (m)(1), as proposed, and thus, FRA is adopting that paragraph without change.

The introductory text in new paragraph (m)(2) specifically requires a host railroad to file an RFA pursuant to paragraph (m) electronically, which could include electronic filing on FRA's Secure Information Repository (*https://sir.fra.dot.gov*), where railroads currently file other PTC-related documents, or any other location FRA designates. If a host railroad wishes to seek confidential treatment of any part of its RFA, the railroad must comply with the existing process and requirements under 49 CFR 209.11, *Request for confidential treatment.* That process includes marking the document properly with the necessary labels and redactions, and providing a statement justifying nondisclosure and referring to the specific legal authority claimed. FRA will post a host railroad's RFA (the public, redacted version, if applicable) and FRA's final decision letter in the respective railroad's PTC docket on *http://www.regulations.gov.*[31] FRA did not receive any comments on the introductory text in new paragraph (m)(2), as proposed, and thus, FRA is adopting that introductory text without change.

In new paragraphs (m)(2)(i) through (v), FRA outlines the specific content requirements for an RFA to an FRA-certified PTC system and the associated PTCSP. The requirements focus on the core information and analysis FRA needs to review to ensure the PTC system, including any proposed changes, will provide an equivalent or greater level of safety than the existing PTC system. Importantly, new paragraph (m)(2)(i) requires the RFA to include a summary of the proposed changes to any safety-critical elements of a PTC system, including: (1) A summary of how the changes to the PTC system would affect its safety-critical functionality; (2) how any new hazards have been addressed and mitigated; (3) whether each change is a planned change that was previously included in all required analysis under § 236.1015, or an unplanned change; and (4) the reason for the proposed changes, including whether the changes are necessary to address or resolve an emergency or urgent issue.

Regarding paragraph (m)(2)(i), APTA recommends that FRA remove the last part of the summary section of the RFA—*i.e.,* ''including whether the changes are necessary to address or resolve an emergency or urgent issue.'' FRA does not agree that this clause should be removed, as that type of statement will provide valuable information to FRA. For example, such information will help FRA understand why a specific RFA should be prioritized and expedited under the circumstances.

Furthermore, for context, FRA's existing paragraphs (d)(7)(i) through (v) of § 236.1021 explain the distinction between an unplanned change and a planned change and impose certain additional requirements, including conducting suitable regression testing to FRA's satisfaction and filing a new PTCDP and PTCSP, under certain circumstances. As noted above, this final rule removes paragraph (d)(7) in its entirety and instead requires a host railroad to identify in its RFA under paragraph (m)(2)(i) only whether the

[30] Also, with respect to I–ETMS and similar systems, FRA acknowledges that in January 2021, FRA's Railroad Safety Board approved AAR and ASLRRA's joint petition, dated August 14, 2020, for a temporary waiver of compliance from 49 CFR 236.1021. Specifically, FRA's approval of the waiver petition authorizes certain railroads to comply with an alternative RFA process, including the filing of joint RFAs, for PTCSP purposes. However, as requested, the waiver applies only to host railroads that operate an Interoperable Train Control PTC system that FRA has certified, or certifies, as a mixed PTC system under 49 CFR 236.1015(e)(4). FRA's approval letter states the waiver is in effect for five years or until FRA issues this final rule, whichever occurs first. For a copy of the waiver petition, or FRA's approval letter, please see public Docket No. FRA–2020–0068.

[31] Railroads' applicable PTC docket numbers are available on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.*

change is a planned change or an unplanned change. That basic information will be valuable to include in the abbreviated RFA under paragraph (m) because several railroads have already accounted for long-term, planned changes to their PTC systems and proactively integrated those assumptions into the corresponding analyses in their PTCSPs.

As FRA noted in the NPRM, planned changes ''are those that the system developer and the railroad have included in the safety analysis associated with the PTC system, but have not yet implemented.'' In its comments, APTA asks FRA to confirm that unplanned changes are, therefore, any changes not already documented in a railroad's PTCSP. FRA confirms that APTA's interpretation is correct. As FRA received only the two above comments on new paragraph (m)(2)(i), this final rule adopts that paragraph as proposed.

New paragraph (m)(2)(ii) requires the RFA to include a copy of any associated software release notes, which is critical for FRA to review and evaluate before one or more railroads deploy the upgraded software. A copy of the release notes is integral in conveying the actual changes to the PTC system, including any corrections, enhancements, or new features or functionality. FRA did not receive any comments on new paragraph (m)(2)(ii), as proposed, and thus, FRA is adopting that paragraph without change.

New paragraph (m)(2)(iii) requires the RFA to contain a confirmation that the host railroad has notified any applicable tenant railroads of the proposed changes, any associated effect on the tenant railroads' operations, and any actions the tenant railroads must take in accordance with the configuration control measures set forth in the host railroad's PTCSP. FRA did not receive any comments on new paragraph (m)(2)(iii), as proposed, and thus, FRA is adopting that paragraph without change.

In the NPRM, FRA proposed that paragraph (m)(2)(iv) would require the RFA to include a statement from the host railroad's Chief Engineer and Chief Operating Officer (COO), or executive officers of similar qualifications, verifying that the PTC system, once modified, would meet all technical requirements under 49 CFR part 236, subpart I, provide an equivalent or greater level of safety than the existing PTC system, and not adversely impact interoperability with any tenant railroads.

In their joint comments regarding proposed paragraph (m)(2)(iv), AAR and ASLRRA recommend the following: ''Instead of requiring hollow paperwork, the railroads instead propose that RFA submissions identify a designated and knowledgeable railroad contact who will be responsible for responding to FRA questions or requests for additional information, if any, and who will be able to do so quickly, completely, and authoritatively.'' AAR and ASLRRA's recommendation is based on several assertions, including that a verification statement from a railroad's Chief Engineer and COO was not required for railroad's initial PTCIP, PTCDP, or PTCSP, and it is unnecessary for RFAs, which are relatively less complex. In addition, AAR and ASLRRA assert that a railroad's Chief Engineer and COO are likely not PTC subject matter experts, and the highly technical changes described in an RFA would not be within their purview. Accordingly, a Chief Engineer and COO would be relying on the representations of their staff about the safety impact of the amendments proposed in the RFA, so the proposed statement would not serve a useful purpose.

In response to AAR and ASLRRA's recommendation, FRA is modifying new paragraph (m)(2)(iv) in the final rule. As FRA proposed in the NPRM, this final rule will still require an RFA to include a statement from the respective host railroad that the modified PTC system (if the proposed changes were implemented) would meet all technical requirements under 49 CFR part 236, subpart I, provide an equivalent or greater level of safety than the existing PTC system, and not adversely impact interoperability with any tenant railroads. This is consistent with existing regulatory provisions that require PTC systems to achieve and maintain a level of safety, for each system modification, that is equal to or greater than the level of safety provided by the previous PTC system.[32] However, based on comments received, FRA is eliminating all references to a host railroad's Chief Engineer and COO (or executive officers of similar qualifications) and instead specifying that this statement must be from a qualified representative of the host railroad. FRA expects this representative to be a management-level person with technical oversight of the railroad's PTC division. To AAR and ASLRRA's point, that representative will be the first person whom FRA contacts with any questions. Also, to be clear, the host railroad's representative must be an employee of the railroad, not a contractor.

New paragraph (m)(2)(v) requires a host railroad to submit any other information that FRA requests on a case-by-case basis, during FRA's review of the RFA. This approach is generally consistent with the existing provision under 49 CFR 236.1015(f), which provides that in any case where a PTCSP, or an RFA in this scenario, ''lacks adequate data regarding [the] safety impacts of the proposed changes, the Associate Administrator may request the necessary data from the applicant.''

AAR and ASLRRA comment that this provision is unnecessary because existing § 236.1021(d) already specifies that FRA can request information necessary to evaluate an RFA in appropriate circumstances. However, AAR and ASLRRA's comment fails to recognize that going forward, under this final rule, existing § 236.1021(d) will apply only to RFAs to PTCIPs and PTCDPs, not RFAs to PTCSPs or PTC systems. FRA explains above that this final rule removes any references to RFAs to PTCSPs or PTC systems from existing paragraph (d), so existing paragraph (d) is no longer applicable to a host railroad's RFA to its PTCSP.[33] Under this final rule, new paragraphs (l) and (m) will govern in this context, as they establish the process, including content requirements, for RFAs associated with FRA-approved PTCSPs and FRA-certified PTC systems.

Also, AAR and ASLRRA comment that this provision (paragraph (m)(2)(v)) is overbroad and creates the possibility of an open-ended process unlikely to be completed within FRA's 45-day decision timeline. As FRA noted in the NPRM, if FRA were to require a host railroad, or a set of host railroads, to provide additional information in support of the RFA, FRA's request will identify a deadline by which to submit the information, and FRA intends to send any such request via email to ensure an efficient process. If the reason for FRA's request is to have additional documentation on file for future reference, but that documentation will

[32] *See, e.g.,* 49 CFR 236.1001(a), 236.1015(d)(11), 236.1015(e)(1)(iii), and 236.1015(g).

[33] AAR and ASLRRA's comments also assert that this type of catch-all provision renders FRA's burden estimates speculative. However, FRA's burden estimates are based on the full set of information that paragraph (m) requires RFAs to PTCSPs to contain, including any responses to FRA's possible requests for additional information on a case-by-case basis, as appropriate or necessary. As AAR and ASLRRA's comments acknowledge, this type of provision exists in current 49 CFR 236.1021(d), as well as other provisions not referenced, including 236.1015(f). FRA's requests for additional information in those contexts have been infrequent.

not be essential to FRA's decision regarding the pending RFA, the deadline FRA specifies might be after the 45-day decision timeline. In this case, the applicable host railroads will receive FRA's decision (by the 45th day) and submit the additional information FRA requested by a specific deadline thereafter.

Alternatively, if under the circumstances, FRA expects the additional information it requests will be integral to FRA's decision regarding the pending RFA, FRA will specify that the additional information must be submitted by, for example, the 20th day after the initial RFA filing. In this case, FRA will be required nonetheless to issue its decision within 45 days of the initial RFA filing, consistent with new paragraph (m)(3) below. FRA has considered AAR and ASLRRA's concerns about new paragraph (m)(2)(v), and FRA wants to clarify that this provision will not affect the 45-day deadline by which FRA must issue its decision, as new paragraph (m)(3) provides.

The clock begins when a host railroad, or a group of host railroads, properly files an RFA with all required information pursuant to new paragraphs (m)(2)(i) through (iv) (*i.e.,* all content requirements for an RFA, expect (m)(2)(v) which refers to any case-by-case requests for additional information). To be clear, if an RFA fails to include *any* of the contents explicitly required for all RFAs to PTCSPs under new paragraphs (m)(2)(i) through (iv), the 45-day clock will not begin on that initial filing date. Instead, the 45-day clock will begin on the date the railroad or railroads properly submit any remaining information required under new paragraphs (m)(2)(i) through (iv). FRA expects this will incentivize a railroad to submit a complete RFA, with all contents required under paragraphs (m)(2)(i) through (iv), in its initial filing.

New paragraph (m)(3) outlines a definite, predictable timeline associated with FRA's review of an RFA to a host railroad's PTCSP or FRA-certified PTC system under paragraph (m). Specifically, paragraph (m)(3) prohibits a host railroad from making any changes, as defined under 49 CFR 236.1021(h)(3) or (4),[34] to its PTC system until the Director of FRA's Office of Railroad Systems and Technology approves the RFA. In this final rule, new paragraph (m)(3)(i) specifies that FRA will review an RFA and issue a decision—*i.e.,* an approval, conditional approval, or denial of the RFA—within 45 days of the date on which the complete RFA was filed under paragraph (m)(2). FRA's decision will be in the form of a letter from the Director of FRA's Office of Railroad Systems and Technology. As noted above, FRA will post each final decision letter in the respective railroad's PTC docket on *http://www.regulations.gov.* FRA, however, may send interim correspondence—including any notices requiring a railroad to provide additional information under new paragraph (m)(2)(v)—via email, which will help ensure that process is efficient.

FRA received multiple comments on new paragraph (m)(3)(i). In its comments, APTA recommends that FRA reduce the review-and-decision timeline from the proposed 45 days to, at most, 14 days. APTA's recommendation is based on its assertion that the industry has implemented at least four to five PTC onboard software releases, for I–ETMS alone, over the last two years, and a 45-day review-and-decision period will constrain the industry's ability to continue at its current pace. AAR and ASLRRA's comments express concern that FRA may not be able to issue a decision within 45 days, and they recommend adding a provision wherein FRA may issue a summary approval of an RFA, with a more detailed rationale in a subsequent written decision. Like APTA's comments, AAR and ASLRRA's comments underscore the importance of host railroads receiving a timely decision so that safety improvements are not unnecessarily delayed.

FRA appreciates these comments, but FRA declines to incorporate these specific recommendations into the final rule for the following reasons. Regarding AAR and ASLRRA's proposal, FRA expects that a provision allowing the agency to issue multiple decision letters, a brief decision letter and a complete decision letter (typically only two pages), could complicate the process and make it less efficient.

As the industry is aware, FRA's regulations do not currently specify a timeline for FRA to review and approve or deny railroads' RFAs to their PTCSPs. In practice, as of May 2021, it has taken FRA 178 days, on average, to review and approve recent RFAs to PTCSPs for FRA-certified PTC systems. One of FRA's main objectives in modifying § 236.1021 in this final rule is to establish a streamlined RFA process with a finite decision timeline to enable railroads to plan and schedule any material modifications, including upgrades, to their PTC systems. An FRA review-and-decision period of 45 days is significantly faster than FRA's current process, and this expedited timeline is based on FRA's interest in facilitating the industry's continual improvements to the reliability and operability of PTC technology. A period of 14 days, as APTA suggests, would not provide sufficient time for FRA to review and evaluate an RFA (including a joint RFA impacting several railroads) and issue a decision letter. Accordingly, FRA's final rule adopts new paragraph (m)(3)(i), as proposed in the NPRM, without change.

New paragraph (m)(3)(ii) explicitly acknowledges that FRA reserves the right to notify a railroad that it may proceed with making its proposed changes prior to the 45-day mark, including in an emergency or under any other circumstances necessitating a railroad's immediate implementation of the proposed changes to its PTC system. FRA did not receive any comments on new paragraph (m)(3)(ii), as proposed, and thus, FRA is adopting that paragraph without change.

New paragraph (m)(3)(iii) specifies that FRA may require a railroad to modify its RFA and/or its PTC system, but only to the extent necessary to ensure safety or compliance with the requirements under FRA's PTC regulations. FRA did not receive any comments on new paragraph (m)(3)(iii), as proposed, and thus, FRA is adopting that paragraph without change.

If FRA denies an RFA under paragraph (m), new paragraph (m)(3)(iv) specifies that each applicable railroad will be prohibited from making the proposed changes to its PTC system until the railroad both sufficiently addresses FRA's questions, comments, and concerns and obtains FRA's approval. Consistent with new paragraph (l) of this section, any host railroads utilizing the same type of PTC system, including the same certification classification under paragraph (e) of § 236.1015, may submit information jointly to address FRA's questions, comments, and concerns following any denial of an RFA under this section. FRA did not receive any comments on new paragraph (m)(3)(iv), as proposed, and thus, FRA is adopting that paragraph without change.

FRA expects the improved process established in new § 236.1021(l) and (m) of this final rule will ensure FRA's review and decision timeline, regarding railroads' proposed changes to their FRA-approved PTCSPs and FRA-certified PTC systems, is predictable and consistent. FRA's improved process will also enable the industry to deploy upgrades and make technological advancements more efficiently.

[34] That is, proposed changes to safety-critical elements of PTC systems or proposed changes to a PTC system that affect the safety-critical functionality of any other PTC system with which it interoperates.

Section 236.1029 PTC System Use and Failures

Currently, paragraph (h) of this section requires railroads to report annually to FRA the number of PTC system failures that occurred during the previous calendar year. This final rule revises this existing paragraph to clarify and expand the reporting requirement and require host railroads to submit the information in a Biannual Report of PTC System Performance (Form FRA F 6180.152). FRA's Excel-based [35] Form FRA F 6180.152 was placed in the docket for this rulemaking (Docket No. FRA–2019–0075) for reference and review on December 18, 2020, when FRA published the NPRM.

FRA received two comments on FRA's proposal to increase the frequency of this reporting requirement from annual to biannual. First, an individual commented that FRA should increase the frequency of this important reporting requirement to quarterly, as that frequency will help FRA more effectively determine if the reliability of PTC systems is trending upward or downward. Second, in its comments, APTA recommends keeping § 236.1029(h) as an annual reporting requirement, noting that increasing the frequency to biannual may require each railroad to use additional resources to review and compile data on a more regular basis.

FRA is adopting the biannual reporting frequency it proposed in the NPRM because that frequency balances FRA's need to oversee the reliability and performance of PTC systems actively throughout the year, with commuter railroads' stated preference for less frequent reporting. With respect to APTA's comment that increasing the reporting frequency from annual to biannual will require railroads to compile performance-related data more regularly, FRA accounts for that burden in its economic analysis in Section V (*Regulatory Impact and Notices*) of this final rule. However, FRA also understands that even under existing paragraph (h) (with an annual reporting deadline), host railroads regularly compile this data, not simply before the annual deadline, to evaluate their PTC systems' failure rates throughout the year.

New paragraph (h)(1) specifies this reporting requirement applies to each host railroad subject to 49 U.S.C. 20157 or 49 CFR part 236, subpart I, which also includes any new host railroads that become subject to the statutory mandate in the future and any host railroads that voluntarily implement a PTC system under subpart I.[36] For clarification and simplicity, FRA is removing the phrase ''following the date of required PTC system implementation established by section 20157 of title 49 of the United States Code'' from existing paragraph (h) because that phrase is unnecessary now that the final statutory deadline of December 31, 2020, has passed.

In addition, new paragraph (h)(1) requires a host railroad to file its Biannual Report of PTC System Performance (Form FRA F 6180.152) electronically, which includes electronic filing on FRA's Secure Information Repository (*https://sir.fra.dot.gov*), where railroads file other PTC-related documents, or another designated location. To the extent a railroad seeks confidential treatment of any part of its Biannual Report of PTC System Performance (Form FRA F 6180.152), the railroad must comply with the existing process and requirements under 49 CFR 209.11, including proper labeling and redacting and providing a statement justifying nondisclosure and referring to the specific legal authority claimed. FRA's new Form FRA F 6180.152 contains fields for a host railroad to identify its request for partial or full confidentiality and provide the required statement under § 209.11(c), if applicable.

Also, under this final rule, paragraph (h)(1) requires a host railroad to include in its Biannual Report of PTC System Performance (Form FRA F 6180.152) the metrics itemized under paragraphs (h)(1)(i) through (vii) for the host railroad, each of its applicable tenant railroads (as explained in new paragraph (h)(4)), and each of its PTC-governed track segments. In this paragraph, FRA acknowledges that a host railroad's PTCIP may identify or designate its specific track segments as territories, subdivisions, districts, main lines, branches, or corridors, based on a railroad's own naming conventions. FRA expects that requiring this relatively high-level geographical information (*i.e.,* by track segment, not by milepost location) will still enable FRA to monitor trends in PTC system reliability throughout the country and focus its resources, for example, on any areas where PTC system failures are occurring at a high rate.

Relatedly, FRA received one comment from an individual inquiring what FRA plans to do with the information railroads submit in their new biannual reports. The commenter states that, from his perspective, there is very little point in requiring railroads to submit such reports without FRA making a coincident commitment to producing high-level summaries of the reports, analyses of trends, and recommendations based on that analysis. He further notes that compelling those interested in these reports to seek information through Freedom of Information Act (FOIA) petitions defeats the entire purpose of a public agency requiring such reporting, in his view.

In response to the general inquiry in this individual's comment, FRA intends to use host railroads' Biannual Reports of PTC System Performance to evaluate, for example, the rate at which PTC systems are experiencing failures, including initialization failures, cut outs, and malfunctions, and trends in system reliability over time. In addition, these reports will help FRA prioritize its resources, including helping inform decisions about which railroads may benefit from additional technical assistance from FRA's PTC specialists. As a part of FRA's ongoing PTC oversight, the agency will evaluate the best way to continue its transparent reporting on PTC progress and challenges.

Consistent with existing paragraph (h), new paragraphs (h)(1)(i) through (iii) require a host railroad's biannual report to include the number of PTC-related failures that occurred during the applicable reporting period, in addition to a numerical breakdown of the ''failures by category, including but not limited to locomotive, wayside, communications, and back office system failures.'' [37] In new paragraphs (h)(1)(i) through (iii), however, FRA acknowledges that the source or cause of a PTC system failure might not necessarily involve, in every instance, the PTC system itself, so this final rule includes an additional category for railroads to select in the applicable drop-down menu in Form FRA F 6180.152—*i.e.,* ''a non-PTC component.''

Another difference between the existing paragraph (h) and FRA's new paragraphs (h)(1)(i) through (iii) is that the final rule utilizes the statutory terminology under 49 U.S.C. 20157(j)(4) as referenced above—initialization failures, cut outs, and malfunctions—which are now defined under paragraph

[35] Excel is a registered trademark of Microsoft Corporation. All third-party trademarks belong to their respective owners.

[36] *See, e.g.,* 49 CFR 236.1011(d) (stating that a ''railroad that elects to install a PTC system when not required to do so may elect to proceed under this subpart [subpart I] or under subpart H of this part,'' including the associated filing and reporting requirements).

[37] Quoting existing 49 CFR 236.1029(h).

(b) of § 236.1003. FRA is aware that railroads track their PTC system failures in this manner (by type of failure), given the existing temporary reporting requirement under 49 U.S.C. 20157(j)(4) and FRA's associated mandatory form, the Statutory Notification of PTC System Failures (Form FRA F 6180.177, OMB Control No. 2130–0553). FRA did not receive any comments on new paragraphs (h)(1)(i) through (iii), as proposed, and this final rule adopts these proposed paragraphs from the NPRM, without change.

In the NPRM, FRA also proposed to expand the existing reporting requirement under paragraph (h) to encompass certain positive, performance-related information, as otherwise the information FRA receives would be about PTC system failures only. Specifically, FRA proposed that new paragraph (h)(1)(iv) would require a host railroad to identify the number of intended enforcements by the PTC system and any other instances in which the PTC system prevented an accident or incident on the host railroad's PTC-governed main lines, during the applicable reporting period.

FRA received extensive comments on this proposal, including from AAR, ASLRRA, APTA, Amtrak, and NJT. FRA addresses the general comments about paragraph (h)(1)(iv) immediately below. FRA responds to the related ACSES II-specific comments later in this section when discussing new paragraph (h)(5).

AAR, ASLRRA, and APTA each comment that the proposed metric, ''intended enforcements,'' is a subjective and unreliable data point. They note that enforcements by a PTC system, whether intended or not, indicate the system is working. Both APTA and Amtrak recommend removing this metric from the final rule in its entirety. FRA declines APTA's and Amtrak's recommendation to eliminate this metric because if FRA were to do so, host railroads' Biannual Reports of PTC System Performance (Form FRA F 6180.152) would not include any positive data about their PTC systems' performance.

AAR and ASLRRA, on the other hand, recommend that FRA refine the metric to be more objective by removing the adjective ''intended'' and retaining the term ''enforcements.'' AAR and ASLRRA explain that this metric is far less subjective and will result in a more easily normalized metric to compare to railroads' other data. They further observe that this metric—*i.e.,* enforcements in general—would avoid cost and resource burdens, which railroads would bear if they needed to analyze individual enforcements to determine whether to classify them as intended. FRA concurs with AAR and ASLRRA's analysis and, in this final rule, under new paragraph (h)(1)(iv), FRA adopts AAR and ASLRRA's joint recommendation to require host railroads to identify the total number of *all* enforcements by the PTC system during the applicable reporting period, whether the enforcements were intended or not.

FRA interprets the term ''enforcement'' in new paragraph (h)(1)(iv) consistently with how the term ''enforce'' is applied in FRA's existing PTC regulations, which include references to, among other things, how a PTC system shall enforce speeds, movement authorities, and signal indications. *See, e.g.,* 49 CFR 236.1005, 236.1013, 236.1015, and 236.1047(a)(3). FRA expects that new paragraph (h)(1)(iv)—focusing on enforcements by a PTC system in general—will provide valuable performance-related data, while avoiding the issues APTA, AAR, and ASLRRA raise regarding the NPRM's more subjective, resource-intensive proposal to report only intended enforcements.

Furthermore, based on comments from AAR, ASLRRA, and APTA, FRA recognizes that its initial proposal for paragraph (h)(1)(iv) also created confusion. In the NPRM, FRA proposed that paragraph (h)(1)(iv) would require a host railroad to identify the number of intended enforcements by the PTC system *and* any other instances in which the PTC system prevented an accident or incident on the host railroad's PTC-governed main lines, during the applicable reporting period. Several comments demonstrate that some people interpreted that proposed content requirement as referring to one connected data point, but it was proposing two separate data points, distinguished by the word ''and.''

Specifically, under proposed paragraph (h)(1)(iv), the NPRM proposed to require railroads to identify: (1) The number of intended enforcements by the PTC system (discussed above); and (2) any other instances in which the PTC system prevented an accident or incident on a host railroad's PTC-governed main lines. Highlighting the confusion about these two separate elements, several comments from AAR, ASLRRA, and APTA assert that it is often impossible to determine if an intended PTC enforcement definitively prevented an accident or not.[38]

FRA maintains that the second metric referenced in paragraph (h)(1)(iv) of the NPRM—*i.e.,* the number of instances in which the PTC system prevented an accident or incident—is necessary to enable FRA to evaluate and quantify PTC technology's positive impact on rail safety. This second metric is a subset of the first metric (the total number of enforcements by the PTC system). FRA understands that a PTC system taking enforcement action does not necessarily mean that, in every case, an accident or incident was prevented, for several reasons. First, there may be cases when a PTC system unnecessarily initiates a brake application (an unintended enforcement), meaning the system, for some reason, took enforcement action when it was not warranted. Second, there may be cases when a PTC system properly takes enforcement action, but an accident or incident would not have occurred even if the PTC system did not take enforcement action. For example, a PTC system might take enforcement action properly to prevent a train from passing a red signal, but in this hypothetical, there was no chance of a train-to-train collision under the specific circumstances because the main line's train schedule was such that only one train operates in that area each day. Although the PTC system properly took enforcement action, that specific enforcement by the PTC system did not actually prevent an accident or incident, as an accident or incident would not have necessarily occurred otherwise.

For clarity about these two data points, this final rule recategorizes this second metric (the subset of enforcements that prevented an accident or incident) as a separate content requirement, under new paragraph (h)(1)(v). Specifically, new paragraph (h)(1)(v) requires a railroad to identify the number of enforcements by the PTC system in which an accident or incident was prevented, as discussed further below. Such a data point will help demonstrate the extent to which PTC systems are performing as designed and improving safety, by highlighting concrete instances in which enforcement by the PTC system actually prevented a train-to-train collision, over-speed derailment, incursion into an established work zone, or movement of a train through a switch left in the wrong position.

In their comments, AAR, ASLRRA, and APTA raise concerns that this metric relies on speculation and subjective assessments. For example, in their comments, they assert that a PTC

[38] In the preceding paragraphs, FRA explains why this final rule eliminates the word ''intended'' from new paragraph (h)(1)(iv), based on AAR and ASLRRA's joint comments and APTA's comments.

system might have prevented only a close call,[39] or in the absence of a PTC system, a train crew might have taken subsequent action that would have prevented the accident. In response to these comments, FRA wishes to clarify the purpose and scope of new paragraph (h)(1)(v). This metric focuses on only specific, undisputed instances in which a PTC system actually prevented an accident or incident, as defined under 49 CFR 225.5. In other words, host railroads should report, under paragraph (h)(1)(v), only the subset of PTC system enforcements where an accident or incident would have occurred under the exact circumstances, but for the intervention of the PTC system. For example, host railroads should count the following types of scenarios: A PTC system prevented a train from traveling into a siding and colliding with a train occupying the siding, or a PTC system prevented a train from moving past a red signal, where another train was occupying the track. These are only two examples of instances where a foreseeable accident or incident would have occurred, but for the PTC system's intervention. These examples are not intended to be exhaustive, but rather to convey that paragraph (h)(1)(v) is focused on undisputed scenarios where an accident or incident would have otherwise occurred under the exact circumstances, as opposed to scenarios where there was only a chance of an accident or incident occurring if the facts or circumstances were changed or exacerbated.

The types of statistics this final rule requires railroads to provide, under new paragraphs (h)(1)(iv) and (v), will help demonstrate the extent to which PTC systems are meeting their desired objectives.

In new paragraphs (h)(1)(vi) and (vii), FRA requires a host railroad's Biannual Report of PTC System Performance (Form FRA F 6180.152) to include certain contextual data to help FRA understand how the occurrences of PTC system initialization failures, cut outs, and malfunctions compare to all operations on that host railroad's PTC-governed main lines.[40] Paragraphs (h)(1)(vi) and (vii) generally encompass the same types of denominators currently set forth in the Statutory Notification of PTC System Failures (Form FRA F 6180.177) with one notable difference. Unlike Form FRA F 6180.177, this final rule requires the same two data points, under new paragraphs (h)(1)(vi) and (vii), from a host railroad and its applicable tenant railroads. In practice, FRA has found that host railroads providing certain denominators for tenant railroads and other denominators for the host railroad itself makes it difficult for FRA to evaluate the rate at which failures are occurring system-wide. FRA expects that requiring uniform figures will help the agency derive more accurate, objective, and comparable statistics. Furthermore, FRA understands that host railroads collect the type of data under paragraphs (h)(1)(vi) and (vii) for their own operations and their tenant railroads' operations because several host railroads have provided those additional data points in their Statutory Notifications of PTC System Failures (Form FRA F 6180.177) to date.

Specifically, new paragraph (h)(1)(vi) requires a host railroad's Biannual Report of PTC System Performance (Form FRA F 6180.152) to include the number of scheduled attempts at initialization of the PTC system during the applicable reporting period, which will help FRA calculate the actual rate of that railroad's PTC system initialization failures.[41] FRA did not receive any comments on this paragraph, and this final rule adopts this paragraph, as proposed in the NPRM, without change.

In the NPRM, under formerly proposed paragraph (h)(1)(vi), FRA also proposed to require a host railroad to identify the number of trains governed by the PTC system during the applicable reporting period, in its biannual report. FRA is eliminating this proposed content requirement in this final rule based on comments from AAR and ASLRRA explaining that this proposal would not result in objective data. AAR and ASLRRA note that different railroads use different metrics to identify and define ''trains'' (*e.g.,* crew starts, brake tests, the addition or subtraction of portions of a train, interchanges between railroads with re-crews, etc.). Their comments further explain that the number of trains involved in a geographic movement may vary considerably by railroad, creating the potential for inconsistency and data that cannot be compared reliably. FRA concurs with these comments and, therefore, FRA's final rule does not adopt that proposed content requirement from the NPRM.[42]

New paragraph (h)(1)(vii), as proposed in the NPRM, requires a host railroad to provide the number of train miles governed by the PTC system during the applicable reporting period, in its biannual report. In their comments, AAR and ASLRRA express support for this metric, noting that it is not subject to variation across railroads, and there is little potential for inconsistency. From AAR and ASLRRA's perspective, the metric of PTC train miles provides the clearest and most easily understood method for statistical normalization when calculating PTC system reliability. As this is the only comment FRA received regarding paragraph (h)(1)(vii) and FRA concurs with AAR and ASLRRA's analysis, FRA's final rule adopts that new paragraph as proposed in the NPRM.

Finally, with respect to paragraph (h)(1) in general, an individual commented that FRA should require railroads to submit the following additional data in their Biannual Reports of PTC System Performance (Form FRA F 6180.152): ''Any reports from hardware or software suppliers or vendors under § 263.1023(b) about

[39] FRA expects that APTA, AAR, and ASLRRA's use of the phrase ''only close calls'' refers to close calls in general, where an accident or incident did not occur but might have under different circumstances. The industry might also be referring to the types of close calls that can be reported under the Confidential Close Call Reporting System (C^{3}RS). Under C^{3}RS, a close call is ''any condition or event that may have the potential for more serious safety consequences. Some examples of close calls could be, but not limited to, a train missing a temporary speed restriction, a train striking a derail without derailing, a blue flag not removed after releasing equipment, or proper track protection not provided during track maintenance.'' The National Aeronautics and Space Administration, C^{3}RS Frequently Asked Questions (2015), *available at https://c3rs.arc.nasa.gov/docs/C3RS_FAQ.pdf.* Based on this definition and the general meaning of the term, FRA expects that close calls encompass a broader universe of scenarios than the fact-specific scenarios under new paragraph § 236.1029(h)(1)(v).

[40] FRA's Biannual Report of PTC System Performance (Form FRA F 6180.152) includes fields for host railroads to provide the raw denominators set forth under paragraphs (h)(1)(vi) through (vii), and FRA will calculate the rate of failures, utilizing those raw denominators. FRA has found that providing fields for railroads to enter such raw denominators, instead of percentages or rates, helps FRA accurately interpret railroads' data, especially when comparing multiple railroads' data or a single railroad's data to its own prior reports.

[41] As a note, in the NPRM, FRA categorized this content requirement under proposed paragraph (h)(1)(v). In this final rule, FRA categorizes this content requirement (the number of scheduled attempts at initialization of the PTC system) as new paragraph (h)(1)(vi), as (h)(1)(v) sets forth the content requirement about the number of specific instances in which a PTC system prevented an accident or incident.

[42] For clarity, FRA notes that the citation of this proposed paragraph in the NPRM was (h)(1)(vi). New paragraph (h)(1)(vi) in this final rule concerns the number of scheduled attempts at initialization of the PTC system, which was proposed paragraph (h)(1)(v) in the NPRM. Given FRA's decision to separate the two elements of proposed paragraph (h)(1)(iv) in the NPRM (into (h)(1)(iv) and (v) in the final rule), paragraph (h)(1) in the final rule includes the same number of paragraphs (*i.e.,* (i) to (vii)) as the NPRM, even though this final rule does not adopt one of the proposed content requirements from the NPRM, based on AAR and ASLRRA's comments.

software failures or reported vulnerabilities.'' FRA declines to adopt this recommendation in the final rule because FRA already receives such reports on an ongoing basis. For example, pursuant to § 236.1023(h), PTC system suppliers and vendors must notify FRA directly of any safety-relevant failure, defective condition, or previously unidentified hazard discovered by the supplier or vendor and the identity of each affected and notified railroad. Furthermore, pursuant to the instructions under § 236.1023(f), suppliers, vendors, and railroads must submit such reports to FRA within 15 days of discovering the reportable issue. Therefore, FRA does not consider it necessary for host railroads to identify such reports in their Biannual Reports of PTC System Performance (Form FRA F 6180.152), as FRA already receives those reports within 15 days, depending on the circumstances, directly from suppliers, vendors, and railroads, as § 236.1023 requires.

In the NPRM, FRA proposed that new paragraph (h)(2) would require a host railroad's Biannual Report of PTC System Performance (Form FRA F 6180.152) to include a summary of any actions the host railroad and its tenant railroads are taking to improve the performance and reliability of the PTC system continually. In their comments, AAR and ASLRRA state that information regarding PTC system improvements is not related to biannual failure statistics, and any such summary should be optional. Based on AAR and ASLRRA's comment, FRA is rewording the content requirement under new paragraph (h)(2) to clarify the scope and purpose of this type of summary and its relation to the biannual failure statistics. Specifically, new paragraph (h)(2) will require a host railroad's biannual report to include a summary of any actions the host railroad and its tenant railroads are taking to reduce the frequency and rate of initialization failures, cut outs, and malfunctions, such as any actions to correct or eliminate systemic issues and specific problems.

In other words, this narrative section will provide railroads an opportunity to explain briefly the steps they are taking to reduce the occurrence of PTC system failures, which could help put the biannual statistics into perspective. FRA did not propose including this content requirement under paragraph (h)(1) because that paragraph is track segment-specific, and FRA acknowledges that railroads generally take a system-wide approach to improving the reliability and performance of their PTC systems. Accordingly, consistent with the NPRM, this final rule categorizes this content requirement in the separate paragraph (h)(2), and FRA's Excel-based Form FRA F 6180.152 contains a field for railroads to enter this summary.

In the NPRM, FRA outlined, under proposed paragraph (h)(3), the dates by which host railroads must submit their Biannual Reports of PTC System Performance (Form FRA F 6180.152) to FRA—*i.e.,* by July 31 (covering the period from January 1 to June 30), and by January 31 (covering the period from July 1 to December 31 of the prior calendar year). In its comments, APTA notes that it is reasonable for FRA to require submission of this data sooner than the current deadline. As a reminder, the current annual filing deadline under existing paragraph (h) is April 16th. Under the existing framework, FRA must wait until April 16th each year to receive railroads' failure-related data from the prior calendar year—data which is quite outdated by the time it is filed.

Though APTA agrees that requiring earlier submission of the data is reasonable, APTA asserts that filing the data about 30 days after the reporting period ends might be insufficient to process and compile the data. APTA recommends that the reporting deadline should be ''within 45 days of the reporting period.'' However, FRA expects that providing railroads one full month (from the end of the half-year period) to complete Form FRA 6180.152 will be sufficient and reasonable, given railroads' experience, since 2016, in submitting their Quarterly PTC Progress Reports (Form FRA F 6180.165) one month after the end of the quarter. Furthermore, under the *temporary* Statutory Notification of PTC System Failures (Form FRA F 6180.177) pursuant to 49 U.S.C. 20157(j)(4), the due date for each monthly notification is currently the 15th of the following month—so, for example, the notification regarding initialization failures, cut outs, and malfunctions during December 2020 was due by January 15, 2021. At least in part due to this temporary reporting requirement, which expires December 31, 2021, FRA expects that by the time this final rule becomes effective, host railroads will be experienced in regularly tracking the performance of their PTC systems. In fact, they are currently required to submit the data more quickly, within 15 days of the end of each month.

Accordingly, FRA expects that allowing one full month for railroads to prepare and submit their Biannual Reports of PTC System Performance (Form FRA F 6180.152) under new paragraph (h)(3) is a reasonable timeframe for this permanent reporting requirement. FRA did not receive any other comments about new paragraph (h)(3) and the reporting deadline therein, and this final rule adopts the proposal in the NPRM without change.

In the NPRM, FRA proposed that new paragraph (h)(4) would explicitly require any applicable tenant railroads that operate on a host railroad's PTC-governed main line(s) to provide the necessary data to their applicable host railroads by a specific date before the biannual filing deadlines—*i.e.,* by July 15 (for the biannual report covering the period from January 1 to June 30) and by January 15 (for the biannual report covering the period from July 1 to December 31 of the prior calendar year).

In their comments, AAR and ASLRRA explain that railroads have already established an efficient process to collect tenant railroads' data, and FRA should leave it to the host and tenant railroads to determine the most effective way to coordinate regarding tenant railroads' PTC-related failures. AAR and ASLRRA also remark that the deadlines specified in proposed paragraph (h)(4) of the NPRM may not allow adequate time for a host railroad to investigate a tenant railroad's failures and capture them in the host railroad's Biannual Report of PTC System Performance (Form FRA F 6180.152). They further note that, in practice, communications between host and tenant railroads may need to occur much earlier and on a continuous basis throughout a reporting period. Accordingly, AAR and ASLRRA recommend that FRA delete this proposal in the final rule, arguing it is unnecessary.

As background, FRA's proposed paragraph (h)(4) regarding tenant railroad responsibilities was based, in part, on comments AAR and APTA previously submitted during the comment period associated with the Statutory Notification of PTC System Failures (Form FRA F 6180.177). Specifically, on February 28, 2020, AAR commented, ''[i]f FRA is going to require hosts to report tenant data, the agency must impose a clear and direct requirement on tenants to report the desired information to their host railroad.'' [43] In APTA's comments, also dated February 28, 2020, APTA observed that a host railroad would need to obtain ''all necessary logs to complete the analyses'' from its tenant railroads to complete Form FRA F 6180.177 accurately.[44]

[43] Docket Nos. FRA–2019–0004–N–20 and FRA–2020–0004–N–3; 85 FR 15022, 15027 (Mar. 16, 2020).

[44] *Id.*

However, based on AAR and ASLRRA's subsequent comments, dated February 16, 2021, on the NPRM, FRA can appreciate that specifying an exact deadline by which a tenant railroad must submit the pertinent data to its applicable host railroads could have the unintended consequence of constraining otherwise effective coordination between host and tenant railroads. For example, as AAR and ASLRRA recognize, certain host railroads might prefer to receive that data by an earlier date or on a continuous basis. Therefore, in this final rule, FRA is removing all references in new paragraph (h)(4) to specific dates by which tenant railroads must provide the data to their applicable host railroads.

Instead, new paragraph (h)(4) establishes a general requirement for each applicable tenant railroad that operates on a host railroad's PTC-governed main line(s) to provide the information required under paragraphs (h)(1) and (2) to each applicable host railroad, without imposing a date-specific deadline. Consistent with the NPRM, the text in paragraph (h)(4) clarifies that a host railroad does not need to include data in Form FRA F 6180.152 regarding a tenant railroad that is subject to an exception under 49 CFR 236.1006(b)(4) or (5) during the applicable reporting period because such a tenant railroad's movements would not be governed by PTC technology in that case, and there would not be any pertinent, performance-related data to submit regarding that tenant railroad.

In addition, new paragraph (h)(4) requires the applicable tenant railroads to provide the necessary data to each applicable host railroad on a continuous basis. FRA based this clause on AAR and ASLRRA's recommendation that FRA defer to host and tenant railroads to coordinate and determine effective timelines for the exchange of this information. FRA also recognizes that this provision must refer, at least minimally, to a timeframe. Otherwise, it would be difficult or impossible for FRA to take enforcement action against a tenant railroad, if necessary, for failing to submit the necessary data to its host railroad to facilitate the host railroad's timely submission of its Biannual Report of PTC System Performance (Form FRA F 6180.152). The language in new paragraph (h)(4) of this final rule requires tenant railroads to provide certain data to their host railroads, without unnecessarily interfering with host and tenant railroads' existing processes for coordination and data-sharing.

Finally, new paragraph (h)(5) provides temporary regulatory relief to railroads utilizing ACSES II or ASES II (referred to hereinafter as ACSES II). This new provision is in response to extensive comments from AAR, ASLRRA, APTA, Amtrak, and NJT regarding new paragraph (h)(1)(iv) of this final rule. In their respective comments, AAR, ASLRRA, APTA, Amtrak, and NJT express concern that one metric (the number of enforcements by the PTC system) could impose a significant burden on railroads operating ACSES II because almost all ACSES II railroads need to obtain that data manually, based on that system's current capabilities or configuration. For example, Amtrak's comments summarize the issue in the following manner: ''The ACSES system does not currently have the technical capability to automatically take enforcement data which is stored in a locomotive's on-board computer, and to transmit that data . . . to a centralized collection and analysis location.''

Amtrak's and APTA's comments each assert that this specific content requirement would create a tremendous strain on the resources of host railroads that operate ACSES II. Similarly, NJT notes that this requirement is especially onerous for railroads that utilize this type of PTC technology. Both Amtrak's comments and AAR and ASLRRA's comments describe the following burden estimate: An employee would manually perform a locomotive download by connecting a laptop to that engine (an approximately 20-minute process for each locomotive in the fleet), and then it would take approximately 30 minutes to process and analyze the data from each locomotive. Amtrak, AAR, and ASLRRA assert that this process would occur every 48 hours, but they do not specify why. FRA expects that their estimated frequency of performing downloads might be due to ACSES II's current onboard memory or storage limitations.

In their respective comments, APTA and Amtrak recommend removing the content requirement under paragraph (h)(1)(iv) from the final rule. On the other hand, AAR and ASLRRA [45] recommend that FRA amend the proposal after consulting with ACSES II railroads regarding a more feasible manner for those railroads to compile the enforcement-related metric. From comments received and FRA's experience overseeing PTC technology, FRA understands that this concern about paragraph (h)(1)(iv) (*i.e.,* the number of enforcements by the PTC system) and the manual process to collect such data is specific only to some railroads utilizing ACSES II, and it does not implicate other types of PTC systems.

Furthermore, FRA recognizes that the comments from Amtrak, AAR, and ASLRRA emphasize that ''nearly all'' or ''most'' ACSES II host railroads currently obtain such data manually. There are currently seven host railroads that utilize ACSES II. Based on host railroads' PTCSPs and other discussions, FRA is aware that at least one ACSES II host railroad currently utilizes an automated tool that remotely collects and analyzes data from the PTC system, including enforcements by the PTC system (the metric under paragraph (h)(1)(iv)) and the performance of various wayside equipment. This is important to underscore because it suggests to FRA that the other six ACSES II host railroads could likewise, over time, explore options or tools for obtaining their enforcement-related data remotely (*i.e.,* without manually performing a locomotive download while connected to each locomotive).

In addition to the tool one ACSES II host railroad is currently utilizing, FRA is aware that other automated options are available to collect the type of data under paragraph (h)(1)(iv). For example, FRA knows of at least one PTC system supplier with a software solution or tool that, among other capabilities, automatically generates reports regarding PTC technology's performance and functioning, including enforcements by the PTC system.

FRA declines to eliminate paragraph (h)(1)(iv) from the final rule, as the number of enforcements by a PTC system is an integral metric about PTC technology's performance.[46] Notably, no other alternatives were suggested by any commenter. Nonetheless, FRA's final rule recognizes that currently, six of the 35 applicable host railroads would likely need to collect this metric manually in the near term. To avoid imposing a significant burden on those railroads, this final rule, under new paragraph (h)(5), provides temporary relief from the content requirement under paragraph (h)(1)(iv) to any railroad operating a PTC system

[45] In addition, NJT comments that it strongly supports AAR and ASLRRA's joint comments, in their entirety.

[46] Furthermore, FRA expects that the number of enforcements by a PTC system during a reporting period is important information from a railroad's perspective, for other purposes as well. For example, that data could inform a railroad about the specific events when its PTC system needed to initiate braking events, and help the railroad identify general train handling issues and opportunities for increased training.

classified under FRA Type Approval Nos. FRA–TA–2010–001 (ACSES II) or FRA–TA–2013–003 (ASES II).[47] Specifically, those railroads must begin submitting the specific metric required under paragraph (h)(1)(iv) not later than January 31, 2023. ACSES II and ASES II host railroads may certainly begin submitting that metric in their Biannual Reports of PTC System Performance (Form FRA F 6180.152) before January 31, 2023, but this provision offers flexibility to those railroads in the short term, based on comments received.

To be clear, this relief applies to the single content requirement under paragraph (h)(1)(iv) only, and these railroads must provide all other data required under paragraph (h) in their Biannual Reports of PTC System Performance (Form FRA F 6180.152), once this final rule is effective. Between publication of this final rule and January 31, 2023, FRA will consult with the six applicable ACSES II railroads to help identify more feasible data collection approaches, consistent with the recommendation from AAR, ASLRRA, and NJT. In general, FRA expects paragraph (h)(5) will provide the six applicable ACSES II host railroads sufficient time either to refine and expedite their manual processes or to adopt a more automated process, with respect to paragraph (h)(1)(iv).

On a separate topic and as noted above, existing § 236.1029(h) currently requires railroads, by April 16th each year, to submit an annual report of the number of PTC system failures that occurred during the previous calendar year. In their comments, APTA, AAR, and ASLRRA request that FRA exercise discretion with respect to the annual report due April 16, 2021, pursuant to existing paragraph (h). Specifically, APTA suggests that railroads should submit the required data from a limited period (from June 2020 to December 2020), instead of calendar year 2020, as existing paragraph (h) requires. AAR and ASLRRA request that FRA accept a compilation of data from April 1, 2020, to March 31, 2021, to satisfy the annual reporting requirement due April 16, 2021. FRA appreciates these comments, but declines these recommendations. FRA is not providing retroactive regulatory relief via this rulemaking. Existing § 236.1029(h) currently governs, and FRA's changes to paragraph (h) will be effective after this final rule is published.

In addition, AAR and ASLRRA recommend that once this final rule is effective, the new Biannual Report of PTC System Performance (Form FRA F 6180.152) under revised paragraph (h) should replace the temporary reporting requirement FRA adopted in 2020. FRA declines this recommendation, as it is not legally permissible. AAR and ASLRRA are referring to the Statutory Notification of PTC System Failures (Form FRA F 6180.177, OMB Control No. 2130–0553), which implements the statutory reporting requirement under 49 U.S.C. 20157(j)(4). That separate reporting requirement remains in place, by statute, until December 31, 2021.[48]

V. Regulatory Impact and Notices

A. Executive Order 12866 (Regulatory Planning and Review)

This final rule is a nonsignificant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' [49] FRA made this determination by finding that the economic effects of this regulatory action will not exceed the $100 million annual threshold defined by Executive Order 12866.

This final rule will reduce the burden on railroads while improving railroad safety. Specifically, in addition to the benefits quantified in the Industry Business Benefits section below, FRA expects this final rule will result in safety benefits for the railroad industry. For example, the expedited RFA process in this final rule will accelerate railroads' ability to update their FRA-certified PTC systems to ensure safe operations (*e.g.,* through ongoing, necessary maintenance) and enhance the technology (*e.g.,* by adding new functionality or improving a PTC system's reliability and operability). In short, this final rule will enable railroads to deploy safety improvements and technological advancements more efficiently and frequently. In addition, the expanded reporting requirement will help railroads and FRA identify systemic failures more quickly and precisely, enabling swifter intervention and resolution.

To enable FRA to oversee the performance and reliability of railroads' PTC systems effectively, FRA is revising the reporting requirement under 49 CFR 236.1029(h). FRA's changes include, but are not limited to, increasing the reporting frequency from annual to biannual, clarifying the types of statistics and information the reports must include, and expanding the reporting requirement to encompass positive performance-related information. Accordingly, FRA estimates that the number of hours it will take a host railroad to report the required information under § 236.1029(h) will increase under this final rule. To provide clarity and precision regarding the reporting requirement under § 236.1029(h), FRA developed an Excel-based Biannual Report of PTC System Performance (Form FRA F 6180.152) that railroads must utilize to satisfy this reporting requirement.

While FRA is expanding this existing reporting requirement, FRA's final rule reduces the regulatory and administrative burden on host railroads under § 236.1021. Specifically, FRA is establishing a streamlined process to enable the railroad industry to make technological advancements to FRA-certified PTC systems more efficiently. Instead of the existing RFA approval process under § 236.1021 for FRA-approved PTCSPs and FRA-certified PTC systems, FRA's final rule: (1) Requires host railroads to comply with a streamlined process, including a concise RFA; and (2) establishes a 45-day FRA decision deadline. This more efficient process will result in business benefits for host railroads and savings for the government. For example, FRA's simplification of the content requirements associated with an RFA to a PTCSP under § 236.1021 will reduce the number of burden hours per RFA. In addition, FRA is permitting host railroads that utilize the same type of PTC system to submit joint RFAs to their PTCDPs and PTCSPs, thus reducing the number of RFAs railroads must submit in the future.

Currently, 35 host railroads must submit RFAs before making certain changes to their PTCSPs and PTC systems under § 236.1021, with many host railroads projected to submit one or two RFAs per year. Over the next ten years, FRA expects there will be an average increase of 1.5 new PTC-governed host railroads per year, beginning in the second year, for a total of approximately 14 additional host railroads. Table A summarizes the types of PTC systems the 35 PTC-mandated host railroads implemented, as of 2020, and the approximate number of RFAs host railroads would file under FRA's

[47] FRA understands that certain host railroads' ACSES II systems are also classified under additional FRA Type Approvals, due to certain FRA-approved system variances. However, for this purpose, FRA is referring to the primary, underlying ACSES II and ASES II FRA Type Approvals, which all applicable ACSES II host railroads utilize, at least in part.

[48] 49 U.S.C. 20157(j). For additional information about this temporary statutory reporting requirement, please see Section III–B (*Expanding the Performance-related Reporting Requirements*) in this final rule.

[49] 58 FR 51735 (Sep. 30, 1993).

existing regulations, without this final rule.

TABLE A—ESTIMATED NUMBER OF REQUIRED RFAS TO PTCSPS BY TYPE OF PTC SYSTEM

Type of PTC system	PTC systems being implemented by host railroads (as of 2020) [50]	Annual number of RFAs per PTC system	Total number of RFAs
ACSES II	8	1	8
CBTC	1	1	1
E–ATC	5	1	5
ITCS	1	1	1
I–ETMS	26	2	52
Total	41		67

Currently, without this final rule, FRA estimates the 35 host railroads would need to submit approximately 67 RFAs annually given the types of changes the industry intends to make to their PTC systems each year under 49 CFR 236.1021(h)(3)–(4) in the future.[51] FRA estimates that the current hourly burden is 160 hours per RFA (without this final rule), based on previously approved PTC Information Collection Requests (ICRs).

Table B below provides the current hourly burden and costs that host railroads face when submitting RFAs to their PTCSPs under the existing § 236.1021.

TABLE B—CURRENT HOST RAILROAD HOURLY BURDEN AND COST FOR RFAS TO PTCSPS

Year	Submissions	Hour burden per submission	Total annual cost	7-Percent	3-Percent
1	67	160	$830,505	$830,505	$830,505
2	69	160	855,296	799,342	830,385
3	70	160	867,692	757,876	817,883
4	72	160	892,483	728,532	816,749
5	73	160	904,879	690,328	803,973
6	75	160	929,670	662,842	801,942
7	76	160	942,066	627,738	788,965
8	78	160	966,857	602,110	786,143
9	79	160	979,252	569,934	773,031
10	81	160	1,004,044	546,133	769,516
Total	740		9,172,744	6,815,340	8,019,091

Costs

As described above, FRA is also amending the reporting requirement under 49 CFR 236.1029(h) by increasing the frequency from annual to biannual, clarifying the types of statistics and information the reports must include, and expanding the reporting requirement to encompass positive performance-related information. Though FRA's final rule will increase the number of required submissions, as well as the hourly burden per submission, FRA estimates the new costs will be offset by the business benefits derived from the final rule's changes as presented in the Business Benefits section below.

To clarify the information FRA is requiring host railroads to submit under § 236.1029(h), FRA created an Excel-based form for the Biannual Report of PTC System Performance (Form FRA F 6180.152). This form incorporates the information currently required under § 236.1029(h) and the additional types of information specified in this final rule. Host railroads with FRA-certified PTC systems are generally experienced in compiling this type of information, given the corresponding reporting requirements under the temporary Statutory Notification of PTC System Failures (Form FRA F 6180.177, OMB Control No. 2130–0553).

During the comment period for the NPRM, FRA received a general request from APTA on behalf of the commuter rail industry. APTA requests that FRA review its cost-benefit analysis associated with the changes to § 236.1029(h) proposed in the NPRM, including establishing the Biannual Report of PTC System Performance (Form FRA F 6180.152). Based on comments received, FRA reviewed and updated its burden estimate associated with expanding the reporting requirement under § 236.1029(h). The table below displays FRA's updated estimate of the burden associated with § 236.1029(h). Please note that the increased burden estimate is based on FRA's review of its proposed revisions to § 236.1029(h) based on comments received, and not on any substantial changes in § 236.1029(h) from the NPRM to the final rule.

[50] Several host railroads have implemented multiple types of PTC systems.

[51] Previously, FRA estimated it would receive, on average, approximately 10 RFAs to railroads' PTCIPs, PTCDPs, and PTCSPs each year. However, from discussions with PTC-mandated railroads, FRA found the estimate did not account adequately for the number of RFAs host railroads intend to submit to their PTCSPs annually under § 236.1021(h)(3)–(4) without the final rule. Tables A, B, and F in this final rule estimate more accurately the approximate average number of RFAs host railroads would submit to their PTCSPs each year under the existing regulations and under the final rule. *See* 84 FR 72121, 72127 (Dec. 30, 2019).

ESTIMATE CHANGES FROM NPRM TO FINAL RULE

Description	NPRM (hours)	Final rule (hours)
Form FRA F 6180.152 Burden (First Three Years)	12	48
Form FRA F 6180.152 Burden (After Three Years)	10	28

The hourly burden associated with submitting the information required under § 236.1029(h) will increase initially from 8 hours per report (without the final rule) to 48 hours per report (with the final rule), on average. FRA estimates that, over time, railroads will develop processes that will decrease the reporting burden from 48 hours per submission to 28 hours per submission. FRA assumes this decrease will begin in the fourth year of the analysis as host railroads become more familiar with the Excel-based form and as they develop processes to improve their data collection and reporting. FRA did not receive any comments that dispute FRA's assumption that railroads will refine and expedite their reporting processes over time.

This analysis accounts for the marginal increase of 40 hours for the first three years of a host railroad reporting and 20 hours for each subsequent year, as compared to the 8-hour burden estimate associated with the existing § 236.1029(h). Table C below shows the marginal hourly burden increase associated with FRA's expansion of the reporting requirement under § 236.1029(h), under the final rule. Consistent with the previously stated estimates, FRA assumes that 35 host railroads will submit these biannual reports in the first year, and the number of applicable host railroads will increase by 1.5 railroads, on average, each year.

TABLE C—TEN-YEAR HOST RAILROAD MARGINAL BURDEN INCREASE

Year	Number of host railroad submissions with marginal 40-hour burden	Number of host railroad submissions with marginal 20-hour burden	Total marginal hourly burden
1	35	0	[52] 1,400
2	37	0	1,460
3	38	0	1,520
4	2	38	840
5	3	38	880
6	5	38	960
7	4	40	960
8	4	42	1,000
9	4	43	1,020
10	4	45	1,060
Total	136	284	11,100

In addition to the marginal increase, host railroads will face an additional reporting burden due to the change from annual to biannual reporting. This analysis accounts for the new burden of 48 hours for the first three years of a host railroad's reporting and 28 hours for each subsequent year to account for the changes from annual to biannual reporting and the expanded content requirements under § 236.1029(h). Table D below shows the new hourly burden under this final rule for the ten-year period of this analysis.

TABLE D—TEN-YEAR HOST RAILROAD NEW SUBMISSIONS

Year	Number of host railroad submissions with new 48-hour burden	Number of host railroad submissions with new 28-hour burden	Total new hourly burden
1	35	0	[53] 1,680
2	37	0	1,752
3	38	0	1,824
4	2	38	1,160
5	3	38	1,208
6	5	38	1,304
7	4	40	1,312
8	4	42	1,368
9	4	43	1,396

[52] 1,400 = (35 host railroad submissions × 40 hours) + (0 host railroad submissions × 20 hours). This calculation is repeated throughout this table.

[53] 1,680 = (35 host railroad submissions × 48 hours) + (0 host railroad submissions × 28 hours). This calculation is repeated throughout this table.

TABLE D—TEN-YEAR HOST RAILROAD NEW SUBMISSIONS—Continued

Year	Number of host railroad submissions with new 48-hour burden	Number of host railroad submissions with new 28-hour burden	Total new hourly burden
10	4	45	1,452
Total	136	284	14,456

FRA calculated the total additional burden hours for submissions by multiplying the respective number of submissions with their associated annual burden for each individual year. The summation of the hourly burden is multiplied by the fully burdened wage rate of a Professional and Administrative employee. For purposes of this analysis, FRA uses the fully burdened rate of $77.47 to calculate both the costs and cost savings throughout this analysis.[54] Table E provides the ten-year cost to the railroad industry associated with the expanded reporting requirement under § 236.1029(h).

TABLE E—TEN-YEAR TOTAL COSTS

Year	Total marginal hour burden	Total new submission hour burden	Total new complete hour burden	Total annual host railroad submissions cost[55]	7-Percent	3-Percent
1	1,400	1,680	3,080	$238,615	$238,615	$238,615
2	1,460	1,752	3,212	248,842	232,562	241,594
3	1,520	1,824	3,344	259,068	226,280	244,196
4	840	1,160	2,000	154,945	126,481	141,797
5	880	1,208	2,088	161,763	123,408	143,724
6	960	1,304	2,264	175,398	125,056	151,300
7	960	1,312	2,272	176,018	117,288	147,412
8	1,000	1,368	2,368	183,455	114,246	149,166
9	1,020	1,396	2,416	187,174	108,937	147,757
10	1,060	1,452	2,512	194,611	105,855	149,153
Total	11,100	14,456	25,556	1,979,887	1,518,730	1,754,713

* **Note:** Table may not sum due to rounding.

FRA estimates that the total cost to the railroad industry will be $1.5 million, discounted at 7 percent, or $1.8 million, discounted at 3 percent. In terms of governmental costs associated with the expanded reporting requirement, including the increase from annual to biannual reporting, FRA expects it will cost approximately $10,000, over the ten-year period, to review the additional data railroads will submit in their Biannual Reports of PTC System Performance (Form FRA F 6180.152). As FRA considers these additional governmental costs to be *de minimis,* they are not included in the economic analysis.

Industry Business Benefits

Currently 35 host railroads are required to submit an RFA before changing safety-critical elements of their PTC systems and their PTCSPs under § 236.1021. FRA estimates that over the next ten years, the number of PTC-governed host railroads will increase by approximately 14, for a total of 49 host railroads. For purposes of this analysis, FRA estimates that approximately 1.5 new host railroads are added each year, beginning in year two.

Currently, under FRA's existing regulations and without this final rule, FRA estimates that host railroads would submit 67 annual RFAs to their PTCSPs that FRA must review and approve before those host railroads change and improve their PTC systems. Under this final rule, FRA is permitting host railroads that utilize the same type of PTC system to submit joint RFAs to their PTCDPs and PTCSPs.[56]

Table F below shows the number of RFAs to PTCSPs that would be submitted under the existing regulations compared to the final rule. Over a ten-year period, FRA estimates that the changes described in this final rule will result in railroads submitting approximately 590 fewer RFAs.

[54] 2019 Composite Surface Transportation Board (STB) Professional and Administrative hourly wage rate of $44.27 burdened by 75-percent ($44.27 × 1.75 = $77.47).

[55] Total Annual Host Railroad Submissions Cost = Total New Complete Hour Burden × $77.47.

[56] FRA expects that permitting host railroads to submit joint RFAs will impact primarily host railroads implementing I–ETMS and E–ATC because each I–ETMS system is relatively similar and manufactured by the same set of suppliers, and each E–ATC system is relatively similar and manufactured by the same set of suppliers.

TABLE F—ESTIMATED NUMBER OF RFAS TO PTCSPS

Current types of PTC systems	Approximate number of RFAs to PTCSPs per year under existing regulations	Approximate number of RFAs to PTCSPs per year under final rule	Total # of RFAs to PTCSPs eliminated under final rule
ACSES II	8	8	0
CBTC	1	1	0
E–ATC	5	1	4
ITCS	1	1	0
I–ETMS	52	[57] 4	48
Subtotal in Year 1:	67	15	52

FRA estimates the current burden is 160 hours per RFA to a PTCSP based on the existing RFA content requirements. FRA's simplification of the content requirements in this final rule will reduce the burden hours by 50 percent, resulting in 80 burden hours per RFA. Table G provides the estimated ten-year cost to host railroads based on FRA simplifying the RFA process under § 236.1021, in this final rule.

TABLE G—TEN-YEAR COST OF JOINT RFAS AND SIMPLIFIED RFAS

Year	Submissions	Hour burden per submission	Total annual cost savings	7-Percent	3-Percent
1	15	80	$92,967	$92,967	$92,967
2	15	80	92,967	86,885	90,259
3	15	80	92,967	81,201	87,630
4	15	80	92,967	75,889	85,078
5	15	80	92,967	70,924	82,600
6	15	80	92,967	66,284	80,194
7	15	80	92,967	61,948	77,858
8	15	80	92,967	57,895	75,591
9	15	80	92,967	54,108	73,389
10	15	80	92,967	50,568	71,251
Total	150		929,670	698,669	816,818

Overall, FRA expects that simplifying the content requirements for RFAs to PTCSPs, as well as permitting host railroads utilizing the same type of PTC system to submit joint RFAs, will result in business benefits of approximately $6.1 million, discounted at 7 percent, or $7.2 million, discounted at 3 percent, over the ten-year period of this analysis.

TABLE H—TOTAL TEN-YEAR INDUSTRY BUSINESS BENEFITS ASSOCIATED WITH REVISED § 236.1021

Year	Current host railroad costs (without final rule)	Cost of joint RFAs and simplified RFA process (with final rule)	Total annual business benefits	7-Percent	3-Percent
1	$830,505	$92,967	$737,538	$737,538	$737,538
2	855,296	92,967	762,329	712,457	740,126
3	867,692	92,967	774,725	676,675	730,253
4	892,483	92,967	799,516	652,643	731,671
5	904,879	92,967	811,912	619,404	721,373
6	929,670	92,967	836,703	596,558	721,747
7	942,066	92,967	849,099	565,790	711,107
8	966,857	92,967	873,890	544,215	710,552
9	979,252	92,967	886,285	515,826	699,642
10	1,004,044	92,967	911,077	495,565	698,264
Total	9,172,744	929,670	8,243,074	6,116,671	7,202,273

[57] For I–ETMS systems, FRA estimates the total number of annual RFAs to PTCSPs would be reduced from 52 (under the existing regulation) to 4 (under the final rule)—*i.e.,* 2 RFAs per year from the set of railroads whose I–ETMS is certified as a mixed PTC system and 2 RFAs per year from the set of railroads whose I–ETMS is certified as a non-vital, overlay PTC system.

In addition, FRA's changes to the RFA process will result in savings for the government, through a reduction in time needed to review an RFA with the existing contents under 49 CFR 236.1021(d)(1)–(7). Under the final rule, FRA will review a streamlined RFA with the more focused information that new paragraph (m)(2) requires.

Table I below outlines the assumptions FRA used to calculate the government savings. FRA's estimates assume there will be PTC system changes that are complex and will require additional time to review, as well as system changes that are less complex.

TABLE I—GOVERNMENT ADMINISTRATIVE COST ASSUMPTIONS

Staff level	Average employee count needed	Average hourly burden	Average hourly salary	Fully burdened rate	Savings per staff level
GS–15	1	10	$77.75	$136.07	$1,315
GS–14	2	105	62.34	109.10	19,171
GS–13	2	119	49.71	86.99	20,646
Total	5	234	189.81	332.17	41,132

Without the final rule, FRA would be required to review and approve or deny all 67 of the RFAs to PTCSPs that would be submitted annually. FRA estimates that over the next ten years, the total cost to the government would be $30.4 million, undiscounted. Table J provides an overview of the ten-year government burden without this final rule.

TABLE J—TEN-YEAR GOVERNMENT BURDEN

[Without final rule]

Year	Submissions	Government cost to review each submission	Total annual cost	7-Percent	3-Percent
1	67	$41,132	$2,755,871	$2,755,871	$2,755,871
2	69	41,132	2,838,136	2,652,463	2,755,471
3	70	41,132	2,879,268	2,514,864	2,713,986
4	72	41,132	2,961,533	2,417,493	2,710,222
5	73	41,132	3,002,665	2,290,719	2,667,829
6	75	41,132	3,084,930	2,199,512	2,661,088
7	76	41,132	3,126,062	2,083,027	2,618,028
8	78	41,132	3,208,327	1,997,985	2,608,664
9	79	41,132	3,249,460	1,891,215	2,565,153
10	81	41,132	3,331,724	1,812,237	2,553,489
Total	740	411,324	30,437,976	22,615,387	26,609,802

Based on the changes to § 236.1021 in this final rule, the number of RFAs that FRA will review will decrease from 67 to 15 per year, beginning in the first year. This reduction is the same as seen in the government savings estimate above. The resulting reduction means that the new government cost to review the RFAs will be reduced to $6.2 million, undiscounted, over the ten-year period. Table K below outlines the government costs under the final rule.

TABLE K—TEN-YEAR NEW GOVERNMENT BURDEN

Year	Submissions	Government cost to review each submission	Total annual government cost	7-Percent	3-Percent
1	15	$41,132	$616,986	$616,986	$616,986
2	15	41,132	616,986	576,622	599,016
3	15	41,132	616,986	538,899	581,568
4	15	41,132	616,986	503,644	564,630
5	15	41,132	616,986	470,696	548,184
6	15	41,132	616,986	439,902	532,218
7	15	41,132	616,986	411,124	516,716
8	15	41,132	616,986	384,228	501,666
9	15	41,132	616,986	359,091	487,054
10	15	41,132	616,986	335,600	472,868
Total	150	411,324	6,169,860	4,636,793	5,420,906

FRA estimates that its changes to § 236.1021 will result in a ten-year government savings of approximately $18.0 million, discounted at 7 percent, or $21.2 million, discounted at 3 percent.

TABLE L—GOVERNMENT ADMINISTRATIVE SAVINGS

Year	Current government cost to review submissions (without final rule)	Government cost to review submissions (with final rule)	Total annual government savings	7-Percent	3-Percent
1	$2,755,871	$616,986	$2,138,885	$2,138,885	$2,138,885
2	2,838,136	616,986	2,221,150	2,075,841	2,156,456
3	2,879,268	616,986	2,262,282	1,975,965	2,132,418
4	2,961,533	616,986	2,344,547	1,913,849	2,145,592
5	3,002,665	616,986	2,385,679	1,820,023	2,119,645
6	3,084,930	616,986	2,467,944	1,759,610	2,128,870
7	3,126,062	616,986	2,509,076	1,671,904	2,101,312
8	3,208,327	616,986	2,591,341	1,613,757	2,106,998
9	3,249,460	616,986	2,632,474	1,532,124	2,078,099
10	3,331,724	616,986	2,714,738	1,476,638	2,080,621
Total	30,437,976	6,169,860	24,268,116	17,978,594	21,188,896

Results

This final rule will reduce the burden on railroads while not adversely affecting railroad safety. To oversee the performance and reliability of railroads' PTC systems, FRA is expanding the reporting requirement under 49 CFR 236.1029(h), as described above. FRA estimates that the total ten-year industry cost associated with the expanded reporting requirement under § 236.1029(h) will be $1.5 million, discounted at 7 percent, or $1.8 million, discounted at 3 percent.

Although FRA is expanding that reporting requirement, this final rule reduces the regulatory and administrative burden on host railroads overall. For example, the simplification of RFAs to PTCSPs will reduce the number of burden hours per RFA. Also, FRA is permitting host railroads that utilize the same type of PTC system to submit joint RFAs to their PTCDPs and PTCSPs, thus reducing the number of RFAs railroads must submit in the future.

During the ten-year period in FRA's analysis, FRA expects that its changes will result in business benefits for the railroad industry of $6.1 million, discounted at 7 percent, or $7.2 million, discounted at 3 percent. In addition, during the same period, FRA expects that these changes will produce government savings amounting to $18.0 million, discounted at 7 percent, or $21.2 million, discounted at 3 percent.

FRA estimates that the total net benefits associated with this final rule will be $22.6 million, discounted at 7 percent, or $26.6 million, discounted at 3 percent. The annualized cost savings will be $3.2 million, discounted at 7 percent, or $3.1 million, discounted at 3 percent.

TABLE M—TOTAL TEN-YEAR NET BENEFITS

Year	Total industry business benefits	Total government savings	Total industry costs	Total net benefits	7-Percent	3-Percent
1	$737,538	$2,138,885	$238,615	$2,637,808	$2,637,808	$2,637,808
2	762,329	2,221,150	248,842	2,734,637	2,555,736	2,654,988
3	774,725	2,262,282	259,068	2,777,939	2,426,359	2,618,474
4	799,516	2,344,547	154,945	2,989,118	2,440,011	2,735,466
5	811,912	2,385,679	161,763	3,035,828	2,316,019	2,697,294
6	836,703	2,467,944	175,398	3,129,249	2,231,111	2,699,318
7	849,099	2,509,076	176,018	3,182,157	2,120,406	2,665,007
8	873,890	2,591,341	183,455	3,281,776	2,043,725	2,668,384
9	886,285	2,632,474	187,174	3,331,585	1,939,013	2,629,984
10	911,077	2,714,738	194,611	3,431,204	1,866,348	2,629,732
Total	8,243,074	24,268,116	1,979,887	30,531,303	22,576,536	26,636,455
Annualized					3,214,391	3,122,605

B. Regulatory Flexibility Act and Executive Order 13272; Regulatory Flexibility Certification

The final rule will apply to all host railroads subject to 49 U.S.C. 20157, including, in relevant part, five Class II or III, short line, or terminal railroads, and 23 intercity passenger railroads or commuter railroads. FRA has determined that one of these railroads is considered a small entity based on revenue and employee size. Therefore, FRA has determined that this final rule will have an impact on a substantial number of small entities (one affected small entity out of one applicable small entity).

However, FRA has determined that the impact on the small entity affected by the final rule will not be significant as the costs are minimal and the business benefits of this rule outweigh the costs. Therefore, the impact on the small entity will be positive, taking the form of business benefits that are greater than any new costs imposed on the entity.

For the railroad industry over a ten-year period, FRA estimates that issuing the final rule will result in new costs of

$1.5 million, discounted at 7 percent, and $1.8 million, discounted at 3 percent. FRA estimates that $37,852 (discounted at 7 percent) and $43,212 (discounted at 3 percent) of the total costs associated with implementing the final rule will be borne by a small entity. Therefore, less than three percent of the final rule's total costs will be borne by a small entity. Additionally, FRA estimates that the final rule will result in business benefits of $149,474, discounted at 7 percent, and $173,983, discounted at 3 percent, for the small entity impacted by this final rule. In total, for the ten-year period of this analysis, the final rule will result in a net benefit of $111,623, discounted at 7 percent, and $130,770, discounted at 3 percent, for a small entity.

Consistent with the findings in FRA's initial regulatory flexibility analysis, and the lack of any comments received on it, the Administrator of FRA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* Please note that any new or revised requirements, as adopted in the final rule, are marked by asterisks (*) in the table below. The sections that contain the current and new information collection requirements under OMB Control No. 2130–0553 [58] and the estimated time to fulfill each requirement are as follows:

CFR section/subject [59]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [60]
235.6(c)—Expedited application for approval of certain changes described in this section.	42 railroads	10 expedited applications.	5 hours	50	$3,850
—Copy of expedited application to labor union	42 railroads	10 copies	30 minutes	5	385
—Railroad letter rescinding its request for expedited application of certain signal system changes.	42 railroads	1 letter	6 hours	6	462
—Revised application for certain signal system changes.	42 railroads	1 application	5 hours	5	385
—Copy of railroad revised application to labor union	42 railroads	1 copy	30 minutes	.5	39
236.1—Railroad maintained signal plans at all interlockings, automatic signal locations, and controlled points, and updates to ensure accuracy.	700 railroads	25 plan changes	15 minutes	6.3	485
236.15—Designation of automatic block, traffic control, train stop, train control, cab signal, and PTC territory in timetable instructions.	700 railroads	10 timetable instructions.	30 minutes	5	385
236.18—Software management control plan—New railroads.	2 railroads	2 plans	160 hours	320	24,640
236.23(e)—The names, indications, and aspects of roadway and cab signals shall be defined in the carrier's Operating Rule Book or Special Instructions. Modifications shall be filed with FRA within 30 days after such modifications become effective.	700 railroads	2 modifications	1 hour	2	154
236.587(d)—Certification and departure test results	742 railroads	4,562,500 train departures.	5 seconds	6,337	487,949
236.905(a)—Railroad Safety Program Plan (RSPP)—New railroads.	2 railroads	2 RSPPs	40 hours	80	6,160
236.913(a)—Filing and approval of a joint Product Safety Plan (PSP).	742 railroads	1 joint plan	2,000 hours	2,000	240,000
(c)(1)—Informational filing/petition for special approval.	742 railroads	0.5 filings/approval petitions.	50 hours	25	1,925
(c)(2)—Response to FRA's request for further data after informational filing.	742 railroads	0.25 data calls/documents.	5 hours	1	77
(d)(1)(ii)—Response to FRA's request for further information within 15 days after receipt of the Notice of Product Development (NOPD).	742 railroads	0.25 data calls/documents.	1 hour	0.25	19
(d)(1)(iii)—Technical consultation by FRA with the railroad on the design and planned development of the product.	742 railroads	0.25 technical consultations.	5 hours	1.3	100
(d)(1)(v)—Railroad petition to FRA for final approval of NOPD.	742 railroads	0.25 petitions	1 hour	0.25	19
(d)(2)(ii)—Response to FRA's request for additional information associated with a petition for approval of PSP or PSP amendment.	742 railroads	1 request	50 hours	50	3,850
(e)—Comments to FRA on railroad informational filing or special approval petition.	742 railroads	0.5 comments/letters	10 hours	5	385
(h)(3)(i)—Railroad amendment to PSP	742 railroads	2 amendments	20 hours	40	3,080
(j)—Railroad field testing/information filing document	742 railroads	1 field test document	100 hours	100	7,700

[58] *See also* 84 FR 72121 (Dec. 30, 2019) (60-day ICR notice); 85 FR 15022 (Mar. 16, 2020) (30-day ICR notice); 85 FR 82400 (Dec. 18, 2020) (NPRM). On June 5, 2020, OMB approved the revised ICR, entitled ''PTC and Other Signal Systems,'' under OMB Control No. 2130–0553, for a period of three years, expiring on June 30, 2023.

[59] The burdens associated with Forms FRA F 6180.165 (Quarterly PTC Progress Reports) and FRA F 6180.166 (Annual PTC Progress Reports) have been completed. By law, railroads' final Quarterly PTC Progress Reports were due on January 31, 2021, and railroads' final Annual PTC Progress Reports were due on March 31, 2021. *See* 49 U.S.C. 20157(c)(1), (2).

[60] The dollar equivalent cost is derived from the 2019 STB Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. For Executives, Officials, and Staff Assistants, this cost amounts to $120 per hour. For Professional/Administrative staff, this cost amounts to $77 per hour.

[61] The temporary Statutory Notification of PTC System Failures (Form FRA F 6180.177) expires on approximately December 31, 2021, per 49 U.S.C. 20157(j).

[62] In response to a public comment, FRA revised the average time per submission from 12 hours, as estimated in the NPRM, to 48 hours. In addition, for the applicable three-year period for PRA purposes, FRA revised the number of annual responses from 76 to 73, which aligns with the economic estimates in this final rule, including the assumption that each year 1.5 additional PTC-governed railroads will submit these biannual reports.

CFR section/subject [59]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [60]
236.917(a)—Railroad retention of records: Results of tests and inspections specified in the PSP.	13 railroads with PSP	13 PSP safety results	160 hours	2,080	160,160
(b)—Railroad report that frequency of safety-relevant hazards exceeds threshold set forth in PSP.	13 railroads	1 report	40 hours	40	3,080
(b)(3)—Railroad final report to FRA on the results of the analysis and countermeasures taken to reduce the frequency of safety-relevant hazards.	13 railroads	1 report	10 hours	10	770
236.919(a)—Railroad Operations and Maintenance Manual (OMM).	13 railroads	1 OMM update	40 hours	40	3,080
(b)—Plans for proper maintenance, repair, inspection, and testing of safety-critical products.	13 railroads	1 plan update	40 hours	40	3,080
(c)—Documented hardware, software, and firmware revisions in OMM.	13 railroads	1 revision	40 hours	40	3,080
236.921 and 923(a)—Railroad Training and Qualification Program.	13 railroads	1 program	40 hours	40	3,080
236.923(b)—Training records retained in a designated location and available to FRA upon request.	13 railroads	350 records	10 minutes	58	4,466
Form FRA F 6180.177—Statutory Notification of PTC System Failures (Under 49 U.S.C. 20157(j)(4)) [61].	38 railroads	144 reports/forms	1 hour	144	11,088
236.1001(b)—A railroad's additional or more stringent rules than prescribed under 49 CFR part 236, subpart I.	38 railroads	1 rule or instruction	40 hours	40	4,800
236.1005(b)(4)(i)–(ii)—A railroad's submission of estimated traffic projections for the next 5 years, to support a request, in a PTCIP or an RFA, not to implement a PTC system based on reductions in rail traffic.	The burden is accounted for under 49 CFR 236.1009(a) and 236.1021.				
(b)(4)(iii)—A railroad's request for a *de minimis* exception, in a PTCIP or an RFA, based on a minimal quantity of PIH materials traffic.	7 Class I railroads	1 exception request	40 hours	40	3,080
(b)(5)—A railroad's request to remove a line from its PTCIP based on the sale of the line to another railroad and any related request for FRA review from the acquiring railroad.	The burden is accounted for under 49 CFR 236.1009(a) and 236.1021.				
(g)(1)(i)—A railroad's request to temporarily reroute trains not equipped with a PTC system onto PTC-equipped tracks and vice versa during certain emergencies.	38 railroads	45 rerouting extension requests.	8 hours	360	27,720
(g)(1)(ii)—A railroad's written or telephonic notice of the conditions necessitating emergency rerouting and other required information under 236.1005(i).	38 railroads	45 written or telephonic notices.	2 hours	90	6,930
(g)(2)—A railroad's temporary rerouting request due to planned maintenance not exceeding 30 days.	38 railroads	720 requests	8 hours	5,760	443,520
(h)(1)—A response to any request for additional information from FRA, prior to commencing rerouting due to planned maintenance.	38 railroads	10 requests	2 hours	20	1,540
(h)(2)—A railroad's request to temporarily reroute trains due to planned maintenance exceeding 30 days.	38 railroads	160 requests	8 hours	1,280	98,560
236.1006(b)(4)(iii)(B)—A progress report due by December 31, 2020, and by December 31, 2022, from any Class II or III railroad utilizing a temporary exception under this section.	262 railroads	5 reports	16 hours	80	6,160
(b)(5)(vii)—A railroad's request to utilize different yard movement procedures, as part of a freight yard movements exception.	The burden is accounted for under 49 CFR 236.1015 and 236.1021.				
236.1007(b)(1)—For any high-speed service over 90 miles per hour (mph), a railroad's PTC Safety Plan (PTCSP) must additionally establish that the PTC system was designed and will be operated to meet the fail-safe operation criteria in Appendix C.	The burden is accounted for under 49 CFR 236.1015 and 236.1021.				
(c)—An HSR–125 document accompanying a host railroad's PTCSP, for operations over 125 mph.	38 railroads	1 HSR–125 document	3,200 hours	3,200	384,000
(c)(1)—A railroad's request for approval to use foreign service data, prior to submission of a PTCSP.	38 railroads	0.3 requests	8,000 hours	2,667	205,359
(d)—A railroad's request in a PTCSP that FRA excuse compliance with one or more of this section's requirements.	38 railroads	1 request	1,000 hours	1,000	120,000
236.1009(a)(2)—A PTCIP if a railroad becomes a host railroad of a main line requiring the implementation of a PTC system, including the information under 49 U.S.C. 20157(a)(2) and 49 CFR 236.1011.	264 railroads	1 PTCIP	535Note:	535	64,200
(a)(3)—Any new PTCIPs jointly filed by a host railroad and a tenant railroad.	264 railroads	1 joint PTCIP	267 hours	267	32,040
(b)(1)—A host railroad's submission, individually or jointly with a tenant railroad or PTC system supplier, of an unmodified Type Approval.	264 railroads	1 document	8 hours	8	616

CFR section/subject [59]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [60]
(b)(2)—A host railroad's submission of a PTCDP with the information required under 49 CFR 236.1013, requesting a Type Approval for a PTC system that either does not have a Type Approval or has a Type Approval that requires one or more variances.	264 railroads	1 PTCDP	2,000 hours	2,000	154,000
(d)—A host railroad's submission of a PTCSP	The burdens are accounted for under 49 CFR 236.1015.				
(e)(3)—Any request for full or partial confidentiality of a PTCIP, Notice of Product Intent (NPI), PTCDP, or PTCSP.	38 railroads	10 confidentiality requests.	8 hours	80	6,160
(h)—Any responses or documents submitted in connection with FRA's use of its authority to monitor, test, and inspect processes, procedures, facilities, documents, records, design and testing materials, artifacts, training materials and programs, and any other information used in the design, development, manufacture, test, implementation, and operation of the PTC system, including interviews with railroad personnel.	38 railroads	36 interviews and documents.	4 hours	144	11,088
(j)(2)(iii)—Any additional information provided in response to FRA's consultations or inquiries about a PTCDP or PTCSP.	38 railroads	1 set of additional information.	400 hours	400	30,800
236.1011(a)–(b)—PTCIP content requirements	The burdens are accounted for under 49 CFR 236.1009(a) and (e) and 236.1021.				
(e)—Any public comment on PTCIPs, NPIs, PTCDPs, and PTCSPs.	38 railroads	2 public comments	8 hours	16	1,232
236.1013, PTCDP and NPI content requirements	The burdens are accounted for under 49 CFR 236.1009(b), (c), and (e) and 236.1021.				
236.1015—Any new host railroad's PTCSP meeting all content requirements under 49 CFR 236.1015.	264 railroads	1 PTCSP	8,000 hours	8,000	616,000
(g)—A PTCSP for a PTC system replacing an existing certified PTC system.	38 railroads	0.3 PTCSPs	3,200 hours	1,067	82,159
(h)—A quantitative risk assessment, if FRA requires one to be submitted.	38 railroads	0.3 assessments	800 hours	267	20,559
236.1017(a)—An independent third-party assessment, if FRA requires one to be conducted and submitted.	38 railroads	0.3 assessments	1,600 hours	533	63,960
(b)—A railroad's written request to confirm whether a specific entity qualifies as an independent third party.	38 railroads	0.3 written requests	8 hours	3	231
—Further information provided to FRA upon request	38 railroads	0.3 sets of additional information.	20 hours	7	539
(d)—A request not to provide certain documents otherwise required under Appendix F for an independent, third-party assessment.	38 railroads	0.3 requests	20 hours	7	539
(e)—A request for FRA to accept information certified by a foreign regulatory entity for purposes of 49 CFR 236.1017 and/or 236.1009(i).	38 railroads	0.3 requests	32 hours	11	847
236.1019(b)—A request for a passenger terminal main line track exception (MTEA).	38 railroads	1 MTEA	160 hours	160	12,320
(c)(1)—A request for a limited operations exception (based on restricted speed, temporal separation, or a risk mitigation plan).	38 railroads	1 request and/or plan	160 hours	160	12,320
(c)(2)—A request for a limited operations exception for a non-Class I, freight railroad's track.	10 railroads	1 request	160 hours	160	12,320
(c)(3)—A request for a limited operations exception for a Class I railroad's track.	7 railroads	1 request	160 hours	160	12,320
(d)—A railroad's collision hazard analysis in support of an MTEA, if FRA requires one to be conducted and submitted.	38 railroads	0.3 collision hazard analysis.	50 hours	17	1,309
(e)—Any temporal separation procedures utilized under the 49 CFR 236.1019(c)(1)(ii) exception.	The burdens are accounted for under 49 CFR 236.1019(c)(1).				
236.1021(a)–(d)—Any RFA to a railroad's PTCIP or PTCDP.	38 railroads	10 RFAs	160 hours	1,600	123,200
(e)—Any public comments, if an RFA includes a request for approval of a discontinuance or material modification of a signal or train control system and a **Federal Register** notice is published.	5 interested parties	10 RFA public comments.	16 hours	160	12,320
(l)—Any jointly filed RFA to a PTCDP or PTCSP (*Note: This is a new proposed paragraph to authorize host railroads to file joint RFAs in certain cases, but such RFAs are already required under FRA's existing regulations*).	The burdens are accounted for under 49 CFR 236.1021(a)–(d) and (m).				

CFR section/subject [59]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [60]
(m)—Any RFA to a railroad's PTCSP (* Note: Revised requirement. This is a new proposed paragraph with a simplified process governing RFAs to PTCSPs*).	38 railroads	15 RFAs	80 hours	1,200 s	92,400
236.1023(a)—A railroad's PTC Product Vendor List, which must be continually updated.	38 railroads	2 updated lists	8 hours	16	1,232
(b)(1)—All contractual arrangements between a railroad and its hardware and software suppliers or vendors for certain immediate notifications.	The burdens are accounted for under 49 CFR 236.1015 and 236.1021.				
(b)(2)–(3)—A vendor's or supplier's notification, upon receipt of a report of any safety-critical failure of its product, to any railroads using the product.	10 vendors or suppliers.	10 notifications	8 hours	80	6,160
(c)(1)–(2)—A railroad's process and procedures for taking action upon being notified of a safety-critical failure or a safety-critical upgrade, patch, revision, repair, replacement, or modification, and a railroad's configuration/revision control measures, set forth in its PTCSP.	The burdens are accounted for under 49 CFR 236.1015 and 236.1021.				
(d)—A railroad's submission, to the applicable vendor or supplier, of the railroad's procedures for action upon notification of a safety-critical failure, upgrade, patch, or revision to the PTC system and actions to be taken until it is adjusted, repaired, or replaced.	38 railroads	2.5 notifications	16 hours	40	3,080
(e)—A railroad's database of all safety-relevant hazards, which must be maintained after the PTC system is placed in service.	38 railroads	38 database updates	16 hours	608	46,816
(e)(1)—A railroad's notification to the vendor or supplier and FRA if the frequency of a safety-relevant hazard exceeds the threshold set forth in the PTCDP and PTCSP, and about the failure, malfunction, or defective condition that decreased or eliminated the safety functionality.	38 railroads	8 notifications	8 hours	64	4,928
(e)(2)—Continual updates about any and all subsequent failures.	38 railroads	1 update	8 hours	8	616
(f)—Any notifications that must be submitted to FRA under 49 CFR 236.1023.	The burdens are accounted for under 49 CFR 236.1023(e), (g), and (h).				
(g)—A railroad's and vendor's or supplier's report, upon FRA request, about an investigation of an accident or service difficulty due to a manufacturing or design defect and their corrective actions.	38 railroads	0.5 reports	40 hours	20	1,540
(h)—A PTC system vendor's or supplier's reports of any safety-relevant failures, defective conditions, previously unidentified hazards, recommended mitigation actions, and any affected railroads.	10 vendors or suppliers.	20 reports	8 hours	160	12,320
(k)—A report of a failure of a PTC system resulting in a more favorable aspect than intended or other condition hazardous to the movement of a train, including the reports required under part 233.	The burdens are accounted for under 49 CFR 236.1023(e), (g), and (h) and 49 CFR part 233.				
236.1029(b)(4)—A report of an en route failure, other failure, or cut out to a designated railroad officer of the host railroad.	150 host and tenant railroads.	1,000 reports	30 minutes	500	38,500
(h)—Form FRA F 6180.152—Biannual Report of PTC System Performance (*Revised requirement and new form *) [62].	38 railroads	73 reports	48 hours	3,504	269,808
236.1033—Communications and security requirements	The burdens are accounted for under 49 CFR 236.1009 and 236.1015.				
236.1035(a)–(b)—A railroad's request for authorization to field test an uncertified PTC system and any responses to FRA's testing conditions.	38 railroads	10 requests	40 hours	400	30,800
236.1037(a)(1)–(2)—Records retention	The burdens are accounted for under 49 CFR 236.1009 and 236.1015.				
(a)(3)–(4)—Records retention	The burdens are accounted for under 49 CFR 236.1039 and 236.1043(b).				
(b)—Results of inspections and tests specified in a railroad's PTCSP and PTCDP.	38 railroads	800 records	1 hour	800	61,600
(c)—A contractor's records related to the testing, maintenance, or operation of a PTC system maintained at a designated office.	20 contractors	1,600 records	10 minutes	267	20,559

CFR section/subject [59]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [60]
(d)(3)—A railroad's final report of the results of the analysis and countermeasures taken to reduce the frequency of safety-related hazards below the threshold set forth in the PTCSP.	38 railroads	8 final reports	160 hours	1,280	98,560
236.1039(a)–(c), (e)—A railroad's PTC Operations and Maintenance Manual (OMM), which must be maintained and available to FRA upon request.	38 railroads	2 OMM updates	10 hours	20	1,540
(d)—A railroad's identification of a PTC system's safety-critical components, including spare equipment.	38 railroads	1 identified new component.	1 hour	1	77
236.1041(a)–(b) and 236.1043(a)—A railroad's PTC Training and Qualification Program (*i.e.,* a written plan).	38 railroads	2 programs	10 hours	20	1,540
236.1043(b)—Training records retained in a designated location and available to FRA upon request.	150 host and tenant railroads.	150 PTC training record databases.	1 hour	150	11,550
Total	N/A	4,567,897 responses	N/A	50,969	4,250,307

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Wells at *Hodan.Wells@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required.

D. Federalism Implications

Executive Order 13132, ''Federalism,'' requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' *See* 64 FR 43255 (Aug. 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations having ''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.'' *Id.* Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule under the principles and criteria contained in Executive Order 13132. FRA has determined this final rule will not have a substantial direct effect on the States or their political subdivisions; on the relationship between the Federal government and the States or their political subdivisions; or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined this final rule does not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This final rule could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771, and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions

identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. *See* 40 CFR 1508.4. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The purpose of this rulemaking is to revise FRA's PTC regulations to reduce unnecessary costs and facilitate innovation, while improving FRA's oversight. This final rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. Instead, the final rule is likely to result in safety benefits. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. *See* 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this regulation, and the final rule meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2B, dated November 18, 2020, require DOT agencies to consider environmental justice principles by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule and has determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA has evaluated this final rule under Executive Order 13211 and determined that this final rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA is amending 49 CFR part 236, as follows:

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES—

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. In § 236.1003 amend paragraph (b) by adding the definitions of ''Cut out,'' ''Initialization failure,'' and ''Malfunction'' in alphabetical order to read as follows:

§ 236.1003 Definitions.

* * * * *

(b) * * *

Cut out means any disabling of a PTC system, subsystem, or component en route (including when the PTC system cuts out on its own or a person cuts out the system with authorization), unless the cut out was necessary to exit PTC-governed territory and enter non-PTC territory.

* * * * *

Initialization failure means any instance when a PTC system fails to activate on a locomotive or train, unless the PTC system successfully activates during a subsequent attempt in the same location or before entering PTC-governed territory. For the types of PTC systems that do not initialize by design, a failed departure test is considered an initialization failure for purposes of the reporting requirement under § 236.1029(h), unless the PTC system successfully passes the departure test during a subsequent attempt in the same location or before entering PTC-governed territory.

* * * * *

Malfunction means any instance when a PTC system, subsystem, or component fails to perform the functions mandated under 49 U.S.C. 20157(i)(5), this subpart, or the applicable host railroad's PTCSP.

* * * * *

■ 3. Amend § 236.1021 by:

■ a. Revising paragraphs (a), (c), (d) introductory text, and (d)(4);

■ b. Removing paragraph (d)(7); and

■ c. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

§ 236.1021 Discontinuances, material modifications, and amendments.

(a) No changes, as defined by this section, to a PTCIP or PTCDP may be made unless:

(1) The railroad files a request for amendment (RFA) to the applicable PTCIP or PTCDP with the Associate Administrator; and

(2) The Associate Administrator approves the RFA.

* * * * *

(c) In lieu of a separate filing under part 235 of this chapter, a railroad may request approval of a discontinuance or material modification of a signal or train control system by filing an RFA to its PTCIP or PTCDP with the Associate Administrator.

(d) FRA will not approve an RFA to a PTCIP or PTCDP unless the request includes:

* * * * *

(4) The changes to the PTCIP or PTCDP, as applicable;

* * * * *

(l) Any RFA to a PTCDP or PTCSP pursuant to this section may be submitted jointly with other host railroads utilizing the same type of PTC system. However, only host railroads with the same PTC System Certification classification under § 236.1015(e) may jointly file an RFA to their PTCSPs. Any joint RFA to multiple host railroads' PTCSPs must include the information required under paragraph (m) of this section. The joint RFA must also include the written confirmation and statement specified under paragraphs (m)(2)(iii) and (iv) of this section from each host railroad jointly filing the RFA.

(m) No changes, as specified under paragraph (h)(3) or (4) of this section, may be made to an FRA-certified PTC system or an FRA-approved PTCSP unless the host railroad first complies with the following process:

(1) The host railroad revises its PTCSP to account for each proposed change to its PTC system and summarizes such changes in a chronological table of revisions at the beginning of its PTCSP;

(2) The host railroad electronically submits the following information in an RFA to the Director of FRA's Office of Railroad Systems and Technology:

(i) A summary of the proposed changes to any safety-critical elements of a PTC system, including a summary of how the changes to the PTC system would affect its safety-critical functionality, how any new hazards have been addressed and mitigated, whether each change is a planned change that was previously included in all required analysis under § 236.1015 or an unplanned change, and the reason for the proposed changes, including whether the changes are necessary to address or resolve an emergency or urgent issue;

(ii) Any associated software release notes;

(iii) A confirmation that the host railroad has notified any applicable tenant railroads of the proposed changes, any associated effect on the tenant railroads' operations, and any actions the tenant railroads must take in accordance with the configuration control measures set forth in the host railroad's PTCSP;

(iv) A statement from a qualified representative of the host railroad, verifying that the modified PTC system would meet all technical requirements under this subpart, provide an equivalent or greater level of safety than the existing PTC system, and not adversely impact interoperability with any tenant railroads; and

(v) Any other information that FRA requests; and

(3) A host railroad shall not make any changes, as specified under paragraph (h)(3) or (4) of this section, to its PTC system until the Director of FRA's Office of Railroad Systems and Technology approves the RFA.

(i) FRA will approve, approve with conditions, or deny the RFA within 45 days of the date on which the RFA was filed under paragraph (m)(2) of this section.

(ii) FRA reserves the right to notify a railroad that changes may proceed prior to the 45-day mark, including in an emergency or under other circumstances necessitating a railroad's immediate implementation of the proposed changes to its PTC system.

(iii) FRA may require a railroad to modify its RFA or its PTC system to the extent necessary to ensure safety or compliance with the requirements of this part.

(iv) Following any FRA denial of an RFA, each applicable railroad is prohibited from making the proposed changes to its PTC system until the railroad both sufficiently addresses FRA's questions, comments, and concerns and obtains FRA's approval. Consistent with paragraph (l) of this section, any host railroads utilizing the same type of PTC system, including the same certification classification under § 236.1015(e), may jointly submit information to address FRA's questions, comments, and concerns following any denial of an RFA under this section.

■ 4. Amend § 236.1029 by revising paragraph (h) to read as follows:

§ 236.1029 PTC system use and failures.

* * * * *

(h) *Biannual Report of PTC System Performance.* (1) Each host railroad subject to 49 U.S.C. 20157 or this subpart shall electronically submit a Biannual Report of PTC System Performance on Form FRA F 6180.152, containing the following information for the applicable reporting period, separated by the host railroad, each applicable tenant railroad, and each PTC-governed track segment (*e.g.,* territory, subdivision, district, main line, branch, or corridor), consistent with the railroad's PTC Implementation Plan:

(i) The total number of PTC system initialization failures, and subtotals identifying the number of initialization failures where the source or cause was the onboard subsystem, wayside subsystem, communications subsystem, back office subsystem, or a non-PTC component;

(ii) The total number of PTC system cut outs, and subtotals identifying the number of cut outs where the source or cause was the onboard subsystem, wayside subsystem, communications subsystem, back office subsystem, or a non-PTC component;

(iii) The total number of PTC system malfunctions, and subtotals identifying the number of malfunctions where the source or cause was the onboard subsystem, wayside subsystem, communications subsystem, back office subsystem, or a non-PTC component;

(iv) The total number of enforcements by the PTC system;

(v) The number of enforcements by the PTC system in which an accident or incident was prevented;

(vi) The number of scheduled attempts at initialization of the PTC system; and

(vii) The number of train miles governed by the PTC system.

(2) A host railroad's Biannual Report of PTC System Performance (Form FRA F 6180.152) shall also include a summary of any actions the host railroad and its tenant railroads are taking to reduce the frequency and rate of initialization failures, cut outs, and malfunctions, such as any actions to correct or eliminate systemic issues and specific problems.

(3) Each host railroad shall electronically submit a Biannual Report of PTC System Performance (Form FRA F 6180.152) to FRA by the following due dates: July 31 (covering the period from January 1 to June 30), and January 31 (covering the period from July 1 to December 31 of the prior calendar year).

(4) Each tenant railroad that operates on a host railroad's PTC-governed main line(s), unless the tenant railroad is currently subject to an exception under

§ 236.1006(b)(4) or (5), shall submit the information required under paragraphs (h)(1) and (2) of this section to each applicable host railroad on a continuous basis.

(5) Any railroad operating a PTC system classified under FRA Type Approval Nos. FRA–TA–2010–001 or FRA–TA–2013–003 must begin submitting the metric required under paragraph (h)(1)(iv) of this section not later than January 31, 2023.

Issued in Washington, DC.

Amitabha Bose,

Deputy Administrator.

[FR Doc. 2021–15544 Filed 7–26–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210505–0101; RTID 0648–XB216]

Fisheries Off West Coast States; Modification of the West Coast Commercial Salmon Fisheries; Inseason Action #19–#21

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason modification of 2021 management measures.

SUMMARY: NMFS announces three inseason actions in the 2021 ocean salmon fisheries. These inseason actions modify the commercial salmon troll fisheries in the area from the U.S./Canada border to the U.S./Mexico border.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions, and remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–676–2148, Email: *Shannon.penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In the 2021 annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), NMFS announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2021, until the effective date of the 2022 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affected both the NOF and SOF commercial salmon troll fishery as set out under the heading Inseason Actions.

Consultation on these inseason actions occurred on June 25, 2021. Representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, California Department of Fish and Wildlife, and Council staff participated in the consultation.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on June 28, 2021 (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #19

Description of the action: Retention of halibut caught incidental to the commercial salmon troll fishery (U.S./Canada border to U.S./Mexico border) is extended past June 30, 2021, and remains in effect until superseded.

Effective date: Inseason action #19 took effect on July 1, 2021, and remains in effect until superseded.

Reason and authorization: The 2021 salmon management measures (86 FR 26425, May 14, 2021) authorize the retention of Pacific halibut caught incidental to the commercial salmon troll fishery in 2021 during April, May, and June, and after June 30, 2021, if quota remains and announced on the NMFS telephone hotline for salmon fisheries. The 2021 incidental Pacific halibut quota for the commercial salmon troll fishery is 45,198 pounds (head off) (20,501 Kilograms (kg)). Landings reported by the states, through June 25, 2021, totaled 5,170 pounds (head off) (2,345 kg), leaving 88.6 percent of the quota unharvested.

The NMFS West Coast Region Regional Administrator (RA) considered the landed catch of Pacific halibut to date and the amount of quota remaining, and determined that this inseason action was necessary to meet management goals set preseason. Inseason modification of the species that may be caught and landed during specific seasons is authorized by 50 CFR 660.409(b)(1)(ii).

Inseason Action #20

Description of the action: The July 2021 quota for the commercial salmon troll fishery from Humbug Mountain, OR, to the Oregon/California border (Oregon Klamath Management Zone (KMZ)) is increased from 200 Chinook salmon to 216 Chinook salmon through an impact-neutral rollover of unused quota from the June commercial salmon troll fishery in the same area.

Effective date: Inseason action #20 took effect on July 1, 2021, and remains in effect until superseded.

Reason and authorization: The 2021 commercial salmon troll fishery in the Oregon KMZ includes two quota managed seasons: June (300 Chinook salmon) and July (200 Chinook salmon) (86 FR 26425, May 14, 2021). The first quota season opened on June 1, 2021, and closed on June 16, 2021 (86 FR 34161, June 29, 2021) to prevent exceeding the 300 Chinook salmon quota. After the closure, 24 Chinook salmon remained uncaught. The annual management measures (86 FR 26425, May 14, 2021) provide that any remaining portion of Chinook salmon quotas in this fishery may be transferred inseason on an impact neutral basis to the next open quota period. The Council's Salmon Technical Team calculated the impact neutral transfer of 24 Chinook salmon from the June season to the July season would result in adding 16 Chinook salmon to the July quota, resulting in an adjusted July quota of 216 Chinook salmon. This quota transfer is impact neutral for spawning escapement goals for Klamath River fall-run Chinook salmon (KRFC), and Sacramento River fall-run Chinook salmon stocks and for KRFC age-4 ocean harvest rate limits. The quota transfer also preserves 50/50 KRFC harvest sharing between non-tribal and Klamath River tribal fisheries. This action did not increase overall 2021 Chinook salmon quota in the SOF commercial salmon troll fishery.

The NMFS West Coast Region RA considered the landings of Chinook salmon in the SOF commercial salmon fishery, fishery effort occurring to date

as well as anticipated under the proposal, and the Chinook salmon quota remaining and determined that this inseason action was necessary to meet management and conservation objectives. Inseason modification of quotas is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #21

Description of the action: The landing and possession limit in the commercial salmon troll fishery in the Oregon KMZ is reduced from 20 Chinook salmon to 10 Chinook salmon per vessel per landing week (Thursday–Wednesday).

Effective date: Inseason action #21 took effect on July 1, 2021, and remains in effect until superseded.

Reason and authorization: The 2021 annual management measures (86 FR 26425, May 14, 2021) for the commercial salmon troll fishery in the Oregon KMZ included a weekly landing and possession limit of 20 Chinook salmon per vessel per landing week (Thursday–Wednesday) from June 1, 2021 to July 31, 2021. Fishing effort and catch rates in June resulted in NMFS taking inseason action to avoid exceeding the June quota in the Oregon KMZ (86 FR 37249, July 15, 2021). In consideration of the smaller quota in July and anticipated fishing effort, the State of Oregon proposed reducing the weekly landing limit for July from 20 Chinook salmon to 10 Chinook salmon per vessel per landing week (Thursday–Wednesday).

The NMFS West Coast Region RA considered the landings of Chinook salmon in the SOF commercial salmon fishery, fishery effort occurring to date as well as anticipated under the proposal, and the Chinook salmon quota remaining and determined that this inseason action was necessary to meet management and conservation objectives. Inseason modification of fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2021 ocean salmon fisheries (86 FR 26425, May 14, 2021), as modified by previous inseason action (86 FR 34161, June 29, 2021; 86 FR 37249, July 15, 2021).

The NMFS West Coast Region RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts and anticipated fishery effort. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act. These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on these actions, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on these actions was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Pacific halibut and Chinook salmon abundance, catch, and effort information was developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), the Pacific Coast Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–15940 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 141
Tuesday, July 27, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0414]

RIN 1625–AA00

Safety Zone; M/V ZHEN HUA 24, Crane Delivery Operation, Chesapeake Bay and Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Chesapeake Bay and Patapsco River. This action is necessary to provide for the safety of life on these navigable waters during the movement of the M/V ZHEN HUA 24 while it is transporting four new Super-Post Panamax container cranes to the Port of Baltimore, anticipated to arrive between August 26, 2021, and September 15, 2021. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 11, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0414 using the Federal Decision Making Portal at *https://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 MST3 Melissa Kelly, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: Telephone (410) 576–2596, *Melissa.C.Kelly@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On June 28, 2021, Ports America Chesapeake, LLC notified the Coast Guard that the M/V ZHEN HUA 24 will be transporting four new Super-Post Panamax container cranes to the Port of Baltimore. The vessel transit is taking place from Shanghai, China. The M/V ZHEN HUA 24 is anticipated to arrive between August 26, 2021, and September 15, 2021. The current estimated arrival date is September 5, 2021, but is subject to change. These cranes will be delivered to, and installed at, the Seagirt Marine Terminal at Baltimore, MD. Prior to transiting to Baltimore, MD, the vessel will arrive in the Chesapeake Bay near Annapolis, MD, to anchor and conduct appropriate cargo configuration for transit.

The cranes exceed the beam of the M/V ZHEN HUA 24 on the port side by approximately 129 feet and on the starboard side by approximately 228 feet. The total beam for the vessel with the cranes aboard is approximately 489 feet. The maximum height of the cranes aboard the vessel is approximately 176 feet. This beam width and cargo height will severely restrict the M/V ZHEN HUA 24's ability to maneuver and create a hazard to navigation if required to meet or pass other large vessels transiting the navigation channels. Because of the size of the cargo and the width of the navigation channels, vessels will not be able to transit around the M/V ZHEN HUA 24, necessitating closure of the navigation channels Chesapeake Channel Lighted Buoy 90 (LLNR 7825) in position 38°58′18.53″ N, 076°23′18.96″ W, and the Seagirt Marine Terminal in position 39°15′02.43″ N, 076°32′20.50″ W, Baltimore, MD. During the transit of the M/V ZHEN HUA 24 under the William P. Lane, Jr. Memorial (US–50/301) Bridges across the Chesapeake Bay and the Francis Scott Key (I–695) Bridge across the Patapsco River, safety concerns will be heightened due to the small margin of error for safe passage. The vessel transit in this area is anticipated to occur during daylight hours only, and in wind conditions of 25 knots or less. Hazards associated with the movement of a large freight vessel with an oversized cargo severely restricted in its ability to maneuver while transiting confined shipping channels include injury or loss of life and damage to property and the environment resulting from collisions with other vessels. The COTP Maryland-National Capital Region has determined that potential hazards associated with the crane delivery operation would be a safety concern for any vessel required to transit the navigation channels in the Chesapeake Bay and the Patapsco River that would meet, pass, or overtake the M/V ZHEN HUA 24.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring that the Coast Guard has time to review and respond to any significant comments and has a final rule in effect in time for the scheduled event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone during the inbound transit of the M/V ZHEN HUA 24. The M/V ZHEN HUA 24 is currently anticpated to arrive at Baltimore sometime between August 26, 2021, and September 15, 2021. The current estimated arrival date is September 5, 2021, but is subject to change. Inbound transit is expected to last approximately 7 hours.

The safety zone would cover all navigable waters of the Chesapeake Bay and Patapsco River within 500 feet of the M/V ZHEN HUA 24 while it is transiting between Chesapeake Channel Lighted Buoy 90 (LLNR 7825) in position 38°58′18.53″ N, 076°23′18.96″ W, and the Seagirt Marine Terminal in position 39°15′02.43″ N, 076°32′20.50″ W, Baltimore, MD. The duration of the zone is intended to ensure the safety of

vessels and these navigable waters before, during, and after the scheduled crane delivery operation. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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).

This regulatory action determination is based on the size and duration of the safety zone, which would impact only vessel traffic required to transit certain navigation channels of the Chesapeake Bay and the Patapsco River for a total no more than 7 enforcement-hours. Although these waterways support both commercial and recreational vessel traffic, the downriver portions of the waterway would be reopened as the M/V ZHEN HUA 24 transits northward in the Chesapeake Bay and up the Patapsco River. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email 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 rulemaking has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email 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 rulemaking elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 7 enforcement hours that would prohibit entry within certain navigable waters of the Chesapeake Bay and Patapsco River. 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. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. 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 call or email 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.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0414 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing 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: 46 U.S.C. 70034, 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.T05–0414 to read as follows:

§ 165.T05–0414 Safety Zone; M/V ZHEN HUA 24, Crane Delivery Operation, Chesapeake Bay and Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay and Patapsco River, within 500 feet of the M/V ZHEN HUA 24 while it is transiting between Chesapeake Channel Lighted Buoy 90 (LLNR 7825) in position 38°58′18.53″ N, 076°23′18.96″ W, and the Seagirt Marine Terminal in position 39°15′02.43″ N, 076°32′20.50″ W, Baltimore, MD. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section—

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* This section will be enforced during inbound transit of the M/V ZHEN HUA 24 to the Port of Baltimore.

Dated: July 20, 2021.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-NCR.

[FR Doc. 2021–15918 Filed 7–26–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES11110900000212]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants and one petition to remove a species (''delist'') under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the Alexander Archipelago wolf (*Canis lupus ligoni*) and western ridged mussel (*Gonidea angulata*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate status reviews of these species to determine whether the petitioned actions are warranted. We find that the petition to delist the golden-cheeked warbler (*Dendroica chrysoparia*) does not present substantial scientific or commercial information indicating the petitioned action may be warranted. Therefore, we are not initiating a status review of the species. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: These findings were made on July 27, 2021. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the species or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES:

Supporting documents: Summaries of the basis for the petition findings contained in this document are available on *http://www.regulations.gov* under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this

supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT.**

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the species for which we are initiating status reviews, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Alexander Archipelago wolf	Douglass Cooper, Ecological Services Branch Chief, Anchorage Fish and Wildlife Conservation Office, 907–271–1467, *Douglass_Cooper@fws.gov.*
Golden-cheeked warbler	Adam Zerrener, Field Supervisor, Austin Ecological Services Field Office, 512–490–0057 x248, *Adam_Zerrenner@fws.gov.*
Western ridged mussel	Paul Henson, State Supervisor, Portland Ecological Services Field Office, 503–231–6179, *paul_henson@fws.gov.*

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i); before 2016, 50 CFR 424.14(b)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on *http://www.regulations.gov* under the appropriate docket number.

TABLE—STATUS REVIEWS

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Alexander Archipelago wolf	FWS–R7–ES–2020–0147	*https://www.regulations.gov/docket?D=FWS-R7-ES-2020-0147*
Golden-cheeked warbler	FWS–R2–ES–2016–0062	*https://www.regulations.gov/docket?D=FWS-R2-ES-2016-0062*
Western ridged mussel	FWS–R1–ES–2020–0150	*https://www.regulations.gov/docket?D=FWS-R1-ES-2020-0150*

Evaluation of a Petition To List Alexander Archipelago Wolf

Species and Range

Alexander Archipelago wolf (*Canis lupus ligoni*); Alaska and Canada.

Petition History

We received a petition on July 15, 2020, dated the same, from the Center for Biological Diversity, Alaska Rainforest Defenders, and Defenders of Wildlife, requesting that we list the Alexander Archipelago wolf as an endangered species or a threatened species and designate critical habitat for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Alexander Archipelago wolf due to potential threats associated with the following: Logging and road development (Factor A); illegal and legal trapping and hunting (Factor B); the effects of climate change (Factor E); and loss of genetic diversity and inbreeding depression (Factor E).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2020–0147 under the Supporting Documents section.

Evaluation of a Petition To Delist Golden-Cheeked Warbler

Species and Range

Golden-cheeked warbler (*Dendroica chrysoparia* = *Setophaga chrysoparia*); Texas, Mexico (Chiapas), and Central America (Guatemala, Honduras, Nicaragua, and El Salvador).

Petition History

On December 27, 1990, the Service published in the **Federal Register** (55 FR 53153) a final rule to list the golden-cheeked warbler as an endangered species. On June 30, 2015, we received a petition dated June 29, 2015, from Nancie G. Marzulla (Marzulla Law, LLC—Washington, DC) and Robert Henneke (Texas Public Policy Foundation—Austin, TX) requesting that we remove the golden-cheeked warbler from the Federal List of Endangered and Threatened Wildlife (''delist'' the species) due to recovery or error in information. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at now 50 CFR 424.14(c) (before 2016, 50 CFR 424.14(a)).

On December 11, 2015, we received supplemental information from the petitioners that included additional published studies and an unpublished report. These studies, as well as others known to the Service and in our files at the time the supplement was received, were considered, as appropriate. On June 3, 2016, we published in the **Federal Register** (81 FR 35698) our finding that the petition did not provide substantial scientific or commercial information indicating that the petition action may be warranted.

The General Land Office of Texas (GLO) challenged our June 3, 2016, negative 90-day finding on the petition to delist. The District Court found in favor of the Service. The GLO appealed the June 3, 2016, 90-day finding that decision, and the Circuit Court vacated and remanded it to the Service. This finding addresses the petition in response to the court's decision.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating the petitioned action may be warranted for the golden-cheeked warbler. Because the petition does not present substantial information indicating that delisting the golden-cheeked warbler may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time by contacting the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**, above.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0062 under the Supporting Documents section.

Evaluation of a Petition To List Western Ridged Mussel

Species and Range

Western ridged mussel (*Gonidea angulata*); California, Oregon, Washington, Idaho, Nevada, and the Canadian Province of British Columbia.

Petition History

On August 21, 2020, we received a petition dated August 18, 2020, from the Xerces Society for Invertebrate Conservation, requesting that we list the western ridged mussel as an endangered species and designate critical habitat for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c).

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for

the western ridged mussel due to potential threats associated with the following: Habitat destruction, modification, and curtailment of range; impacts to water quantity, water quality, and natural flow and temperature regimes; aquatic invasive species (Factor A); and disease (Factor C).

We find that the petition presents substantial scientific or commercial information indicating that regulatory mechanisms may be inadequate to ameliorate or reduce those threats (Factor D). We determined that the petition does not provide substantial documentation for the threats of overutilization of the species for commercial, recreational, scientific, or educational purposes (Factor B) and loss of genetic diversity (Factor E). The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0150 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for Alexander Archipelago wolf and western ridged mussel present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species. In addition, we have determined that the petition summarized above for the golden-cheeked warbler does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. We are, therefore, not initiating a status review of this species in response to this petition.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Principal Deputy Director Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–15497 Filed 7–26–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 86, No. 141
Tuesday, July 27, 2021

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; Correction

AGENCY: Rural Housing Service, Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service, Department of Agriculture, published a document in the **Federal Register** of July 16, 2021, concerning request for comments on specifications for the Direct Single Family Housing Loan and Grant Program. The document contained an incorrect number of respondents and total burden hours.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 16, 2021, in FR Doc 2021–15117, on page 37732, in the second column, correct the *Number of Respondents:* to read 248,919 and correct the *Total Burden Hours:* to read 305,646.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–15900 Filed 7–26–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 26, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Study of Nutrition and Activity in Child Care Settings II (SNACS–II)

OMB Control Number: 0584–NEW.

Summary of Collection: The Child and Adult Care Food Program (CACFP), administered by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS), provides reimbursement for nutritious meals and snacks served to eligible children enrolled in participating child care programs. Reimbursable meals and snacks must meet CACFP's meal pattern requirements. Section 28(a) of the Richard B. Russell National School Lunch Act (NSLA) authorizes the USDA Secretary to conduct performance assessments of CACFP, including the nutritional quality of the meals and the cost of producing them. Under Section 28(c), entities participating in CACFP shall cooperate in the conduct of evaluations and studies.

SNACS–II is the second comprehensive, nationally representative assessment of CACFP providers and the infants, children, and teens they serve. It will update the picture of the CACFP after updated meal pattern requirements went into effect in October 2017. Under the updated requirements, CACFP meals and snacks must include a wider variety of fruits and vegetables, more whole grains, and less added sugar and saturated fat. The updated requirements are also designed to encourage breastfeeding.

Need and Use of the Information: SNACS–II will collect data in program year 2022–2023 to address eight broad objectives: (1) CACFP provider characteristics, (2) nutritional quality of foods offered, (3) children's dietary intakes, (4) children's physical activity and household characteristics, (5) CACFP plate waste, (6) teens' physical activity and household characteristics, (7) infants' dietary intakes and physical activity while in care, and (8) the cost to produce CACFP meals and snacks. SNACS–II will largely replicate the methods used in the first Study of Nutrition and Activity in Child Care Settings because comparing key outcomes at the two points in time is an important focus of the study. SNACS–II will collect data from nationally representative samples of CACFP providers, including family day care homes, child care centers, Head Start centers, at-risk afterschool centers, and outside-school-hours care centers; infants, children, and teens; and parents/guardians. To address the array of research questions under the eight study objectives, the data collection activities to be undertaken subject to this notice include the following:

- The Provider Survey and Environmental Observation Form will be used to describe the characteristics of CACFP providers.
- The Menu Survey will be used to assess the nutritional quality of foods offered.
- The Meal Observation Booklet and the Automated Self-Administered 24-Hour dietary recall interview (ASA24) will be used to describe children's dietary intakes.
- The Parent Interview and Height and Weight Form collect data on children's physical activity and household characteristics.
- The Food and Physical Activity Experiences Survey and Teen Parent Interview collect data on teens' physical activity and household characteristics.

• The Infant Menu Survey will be used to assess the nutrition quality of foods offered to infants. The Infant Intake Form collect information on infants' dietary intakes while in care.

• The Pre-Visit Cost Interview, Pre-Visit Cost Form, Sponsor/Center Cost Interview, Center Director Cost Interview, Center Food Service Cost Interview, and Self-Administered Cost Questionnaire collect information on the cost to produce CACFP meals and snacks.

Description of Respondents: State Agencies, Private Sector (Business-for-profit and not-for profit), Individuals and Households.

Number of Respondents: 19,373.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 26,538.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–15886 Filed 7–26–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Form BC–170, U.S. Census Employment Application and Form BC–171, Additional Applicant Information

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 16, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Form BC–170, U.S. Census Employment Application and Form BC–171, Additional Applicant Information.

OMB Control Number: 0607–0139.

Form Number(s): Form BC–170 and BC–171.

Type of Request: Regular submission, Request for Extension Without Change.

Number of Respondents: 30,000 annually for a total of 90,000 over the three year period.

Average Hours per Response: 20 minutes.

Burden Hours: 10,000 annually for a total of 30,000 over the three year period.

Needs and Uses: The BC–170 is an integral part of the application process for persons interested in applying for Census field positions. Administrative staff review the information provided on this form to determine eligibility for our field jobs. Hiring officials use the form to evaluate applicants in order to select the best possible candidates for these positions.

While the BC–171 is a voluntary form which collects information not used to make selection decisions, it serves to allow the Census Bureau to comply with Federal directives, described in Section 11 of this document, *Justification for Sensitive Questions,* and to evaluate its recruiting sources. The *Education* and *Recruiting Sources* information gathered on the BC–171 will assist the Census Bureau in determining if recruiting advertisements and tactics are working to produce qualified applicants and determine if persons at all education levels are attracted to the positions available.

Affected Public: Individuals interested in applying for Census field positions.

Frequency: Applicants will only be required to use these forms one time unless, after two years, they have not been selected for a position and wish to reapply.

Respondent's Obligation: Voluntary.

Legal Authority: This collection is authorized by Title 13, United States Code, Section 23 a and c.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0139.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15909 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Request for Nominations of Members To Serve on the Census Scientific Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Director of the Census Bureau (Director) is seeking nominations for the Census Scientific Advisory Committee (CSAC). The purpose of the CSAC is to provide advice to the Director on the full range of Census Bureau programs and activities including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The Director has determined that the work of the CSAC is in the public interest and relevant to the duties of the Census Bureau. Therefore, the Director is seeking nominations to fill vacancies on the CSAC. Additional information concerning the CSAC can be found by visiting the CSAC's website at: *https://www.census.gov/about/cac/sac.html.*

DATES: Nominations must be received on or before September 30, 2021. Nominations must contain a completed resume. The Census Bureau will retain nominations received after the September 30, 2021 date for consideration should additional vacancies occur. The resume must be sent to the address below.

ADDRESSES: Please submit nominations to the Census Scientific Advisory Committee email address, *census.scientific.advisory.committee@census.gov* (subject line ''2021 CSAC Nominations'').

FOR FURTHER INFORMATION CONTACT: Shana J. Banks, Chief, Advisory Committee Branch, Office of Program, Performance and Stakeholder Integration (PPSI), Census Bureau, by telephone at 301–763–3815 or by email at *Shana.J.Banks@census.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service

(FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Federal Advisory Committee Act (FACA), Title 5, United States Code, Appendix 2, Section 10, the Director of the Census Bureau is seeking nominations for the Census Scientific Advisory Committee (CSAC). The CSAC will operate under the provisions of the FACA and will report to the Secretary of the Department of Commerce through the Director of the Census Bureau.

The CSAC will advise the Director of the Census Bureau on the full range of Census Bureau programs and activities. The CSAC will provide scientific and technical expertise from the following disciplines: Demographics, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, information technology and computing, marketing and other fields of expertise, as appropriate, to address Census Bureau program needs and objectives.

Objectives and Duties

1. The CSAC advises the Director of the Census Bureau (Director) on the full range of Census Bureau programs and activities including communications, decennial, demographic, economic, field operations, geographic, information technology, and statisics.

2. The CSAC will address census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

3. The CSAC will provide formal review and feedback on internal and external working papers, reports, and other documents related to the design and implementation of census programs and surveys.

4. The CSAC will function solely as an advisory body and shall comply fully with the provisions of the FACA.

Membership

1. The CSAC consists of up to 21 members who serve at the discretion of the Director. The Census Bureau is seeking six qualified candidates to be considered for appointment.

2. The CSAC aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of census programs and/or activities. Individuals will be selected based on their expertise in or represenation of specific areas as needed by the Census Bureau.

3. The CSAC members will serve for a three-year term. All members will be reevaluated at the conclusion of each term with the prospect of renewal, pending the committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for a second three-year term at the discretion of the Director.

4. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates Program, other advisory committees, etc.). Members who have served on one Census Bureau Advisory committee may not be reappointed or serve on the CSAC until at least three years have passed from the termination of previous service.

5. Members will serve as ''Special Government Employees (SGEs).'' SGEs will be subject to the ethics rules applicable to SGEs. Members will be individually advised of the capacity in which they will serve through their appointment letters. Committee members are selected from academia, public and private enterprise, and nonprofit organizations, which are further diversified by business type or industry, geography, and other factors.

Miscellaneous

1. Members of the CSAC serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The CSAC meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Bureau Director or Designated Federal Officer. All CSAC meetings are open to the public in accordance with the FACA.

Nomination Process

1. Nominations should satisfy the requirements described in the Membership section above.

2. Individuals, groups, and/or organizations may submit nominations on behalf of candidates. A summary of the candidate's qualifications (resume´ or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the committee, including, but not limited to, regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse CSAC membership.

Ron S. Jarmin, Acting Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: July 20, 2021.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15901 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–832, A–580–912, A–201–855]

Acrylonitrile-Butadiene Rubber From France, the Republic of Korea, and Mexico: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Patrick Barton at (202) 482–0012 (France); Andre Gziryan at (202) 482–2201 (Republic of Korea); and Dennis McClure at (202) 482–5973 (Mexico); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On June 30, 2021, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of acrylonitrile-butadiene rubber (AB Rubber) from France, the Republic of Korea (Korea), and Mexico filed in proper form on behalf of the petitioner,[1] a domestic producer of AB Rubber.[2]

On July 2, 2021, July 6, 13, and 14, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petitions in

[1] Zeon Chemicals L.P. and Zeon GP, LLC (collectively, Zeon) (the petitioner).

[2] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties: Acrylonitrile-Butadiene Rubber from France, Mexico and South Korea,'' dated June 30, 2021 (the Petitions).

separate supplemental questionnaires.[3] The petitioner filed responses to the supplemental questionnaires on July 7, 12, 14, 15, 2021.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleged that imports of AB Rubber from France, Korea, and Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the domestic AB Rubber industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigations.[5]

Periods of Investigation

Because the Petitions were filed on June 30, 2021, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the France, Korea, and Mexico AD investigations is April 1, 2020, through March 31, 2021.

Scope of the Investigations

The product covered by these investigations is AB Rubber from France, Korea, and Mexico. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On July 2, 2021, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On July 7, 2021, the petitioner revised the scope.[7] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on August 9, 2021, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 19, 2021, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of AB Rubber to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe AB Rubber, it may be that only a select few product characteristics take into

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from France, Mexico, and the Republic of Korea: Supplemental Questions,'' dated July 2, 2021 (General Issues Supplemental); ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from France: Supplemental Questions,'' dated July 6, 2021 (France Supplemental); ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from the Republic of South Korea: Supplemental Questions,'' dated July 6, 2021; ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from Mexico: Supplemental Questions,'' dated July 6, 2021 (Mexico Supplemental); Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from France: Phone Call with Counsel to the Petitioner,'' dated July 13, 2021; Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from the Republic of Korea: Phone Call with Counsel to the Petitioner,'' dated July 13, 2021; Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from Mexico: Phone Call with Counsel to the Petitioner,'' dated July 13, 2021; Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from France: Phone Call with Counsel to the Petitioner,'' dated July 14, 2021; and Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Acrylonitrile-Butadiene Rubber from Mexico: Phone Call with Counsel to Petitioner,'' dated July 14, 2021.

[4] *See* Petitioner's Letters, ''Zeon Chemical L.P. and Zeon GP, LLC's Response to General Issues Questionnaire,'' dated July 7, 2021 (General Issues Supplement); ''Acrylonitrile Butadiene Rubber from France: Supplemental Questionnaire,'' dated July 12, 2021; ''Acrylonitrile Butadiene Rubber from the Republic of South Korea: Supplemental Questionnaire,'' dated July 12, 2021; ''Acrylonitrile Butadiene Rubber from Mexico: Supplemental Questionnaire,'' dated July 12, 2021; ''Zeon Chemical L.P. and Zeon GP, LLC's Response to Questions Raised in July 13, 2021 Phone Call with Counsel to the Petitioner,'' dated July 14, 2021; and ''Acrylonitrile-Butadiene Rubber from France and Mexico: Zeon Chemical L.P. and Zeon GP, LLC's Response to Questions Raised in July 14, 2021 Phone Call with Counsel to the Petitioner,'' dated July 15, 2021.

[5] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[6] *See* General Issues Supplemental at 3–4.

[7] *See* General Issues Supplement at 2–4.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on August 9, 2021, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on August 19, 2021. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that AB Rubber, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2020.[15] The petitioner states that it is the only domestic producer of AB Rubber; therefore the Petitions are supported by 100 percent of the U.S. industry.[16] We relied on data provided by the petitioner for purposes of measuring industry support.[17]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* the Petitions at Volume I at 14–25 and Exhibits I–4, I–6, I–12, and I–13; *see also* General Issues Supplement at 1 and Exhibit GI–2.

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklists, ''Antidumping Duty Investigation Initiation Checklists: Acrylonitrile-Butadiene Rubber from France, Mexico, and the Republic of Korea,'' (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Acrylonitrile-Butadiene Rubber from France, Mexico, and the Republic of Korea (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[15] *See* the Petitions at Volume I at Exhibit I–17.

[16] *See* the Petitions at Volume I at 2–4 and Exhibits I–1 through I–5; *see also* General Issues Supplement at 5 and Exhibits GI–8 and GI–9.

[17] *See* the Petitions at Volume I at 2–4 and Exhibits I–1 through I–5; *see also* General Issues Supplement at 5 and Exhibits GI–8 and GI–9.

[18] *See* the Petitions at Volume I at 2–4 and Exhibits I–1 through I–5; *see also* General Issues Supplement at 5 and Exhibits GI–8 and GI–9.

[19] *See* the Petitions at Volume I at 2–4 and Exhibits I–1 through I–5; *see also* General Issues Supplement at 5 and Exhibits GI–8 and GI–9; and section 732(c)(4)(D) of the Act.

[20] *See* the Petitions at Volume I at 2–4 and Exhibits I–1 through I–5; *see also* General Issues Supplement at 5 and Exhibits GI–8 and GI–9. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[21] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[22] *Id.*

threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by significant and increasing market share of subject imports; lost sales and revenues; underselling and price depression and/or suppression; increase in cost of goods sold per unit of production; declines in production, shipments, and capacity utilization, and decline in financial performance.[24] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of AB Rubber from France, Korea, and Mexico. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For France, Korea, and Mexico, the petitioner based export price (EP) on average unit values (AUVs) of imports into the United States during the POI, under United States Harmonized Tariff Schedule (HTSUS) subheading 4002.59.0000, which is discrete to AB Rubber. As the AUVs used for EP are stated on a free-on-board (FOB) basis, for France and Mexico, the petitioner deducted foreign inland freight as an adjustment to calculate a net ex-factory U.S. price.[26] The petitioner was unable to identify a public source to approximate the average distance between the nearest container port and the addresses of the Korean AB Rubber plants identified in Volume I of the Petitions. Accordingly, the petitioner did not make an inland freight adjustment to the FOB per-unit value of subject merchandise for the EP calculated for Korea.[27]

Normal Value [28]

For France, Korea, and Mexico, the petitioner stated it was unable to obtain home market or third country prices to use as a basis for NV.[29] Accordingly, the petitioner based NV on constructed value (CV).[30] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Normal Value Based on Constructed Value

As noted above, the petitioner was not able to obtain home market prices or third country prices to use as a basis for NV. Accordingly, the petitioner based NV on CV.[31] Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[32]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of AB Rubber from France, Korea, and Mexico are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for AB Rubber for each of the countries covered by this initiation are as follows: (1) France—41.73 percent; (2) Korea—105.38 percent; and (3) Mexico—92.70 percent.[33]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of AB Rubber from France, Korea and Mexico are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioner named one company in France (*i.e.,* Arlanxeo Emulsion Rubber France), one company in Mexico (*i.e.,* INSA (Dynasol Group)), and two companies in Korea (*i.e.,* Kumho Petrochemical and LG Chemical, Ltd.) as producers/exporters of AB Rubber, while providing independent, third-party information as support.[34] We currently know of no additional producers/exporters of AB Rubber from France, Korea, and Mexico. Accordingly, Commerce intends to individually examine these producers/exporters in the France, Korea, and Mexico investigations, respectively. We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Commerce will not accept rebuttal comments regarding respondent selection. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters, if no comments are received or if comments received further support the existence of only the above-mentioned producers/exporters in France, Korea, and Mexico, we do not intend to conduct respondent selection and will proceed to issuing the initial antidumping questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.*

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of France, Korea, and

[23] *See* Petitions at Volume I at 26 and Exhibit I–10; *see also* General Issues Supplement at 6 and Exhibit GI–12.

[24] *See* Petitions at Volume I at 25–34 and Exhibits I–9, I–10, I–14, I–15, and I–17 through I–19; *see also* General Issues Supplement at Exhibits GI–10 through GI–14.

[25] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Acrylonitrile-Butadiene Rubber from France, Mexico, and the Republic of Korea.

[26] *See* Country-Specific AD Initiation Checklists.

[27] *Id.*

[28] In accordance with section 773(b)(2) of the Act, for France, Korea, and Mexico investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[29] *See* Country-Specific AD Initiation Checklists.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* Country-Specific AD Initiation Checklists for details of calculations.

[34] *See* Petitions at Volume I at 11–12 and Exhibits I–2 and I–4; *see also* General Issues Supplement at 1–2 and Exhibits GI–3 and GI–4.

Mexico via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of AB Rubber from France, Korea, and/or Mexico are materially injuring, or threatening material injury to, a U.S. industry.[35] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[36] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [37] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[38] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD proceeding must certify to the accuracy and completeness of that information.[39] Parties must use the certification formats provided in 19 CFR 351.303(g).[40] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[41]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 20, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigations

The product covered by these investigations is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber (AB Rubber). AB Rubber is a synthetic rubber produced by the emulsion polymerization of butadiene and acrylonitrile with or without the incorporation of a third component selected from methacrylic acid or isoprene. This scope covers AB Rubber in solid or non-aqueous liquid form. The scope also includes carboxylated AB Rubber.

Excluded from the scope of these investigations is AB Rubber in latex form (commonly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4002.51.0000). Latex AB Rubber is commonly either (a) acrylonitrile/butadiene polymer in latex form or (b) acrylonitrile/butadiene/methacrylic acid polymer in latex form. The broader definition of latex refers to a water emulsion of a synthetic rubber obtained by polymerization.

[35] *See* section 733(a) of the Act.

[36] *Id.*

[37] *See* 19 CFR 351.301(b).

[38] *See* 19 CFR 351.301(b)(2).

[39] *See* section 782(b) of the Act.

[40] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[41] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Also excluded from the scope of these investigations is: (a) AB Rubber containing additives (*e.g.,* nitrile rubber further compounded with fillers, reinforcement agents, vulcanization agents, etc.; by example, products classified under HTSUS subheading 4005); (b) AB Rubber containing rubber processing chemicals, AB Rubber containing other materials used for further processing beyond the polymerization process; (c) hydrogenated AB Rubber (commonly referred to as HNBR) produced by subsequent dissolution and hydrogenation of AB Rubber; (d) reactive liquid polymers containing acrylonitrile and butadiene with amine, epoxy, carboxyl, or methacrylate vinyl chemical functionality.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by modifying physical form or packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the AB Rubber.

The merchandise subject to these investigations is classified in the HTSUS at subheading 4002.59.0000. While the HTSUS subheading numbers are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 2021–15895 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Safety and Health Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 19, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Safety and Health Information Collection.

OMB Control Number 0693–0080.

Form Number(s): None.

Type of Request: Regular.

Number of Respondents: 999.

Average Hours per Response: 10 minutes.

Burden Hours: 168.

Needs and Uses: The National Institute of Standards and Technology (NIST) is a unique federal campus which hosts daily a range of non-federal individuals. Non-federal individuals may include NIST Associates, volunteers, students, and visitors. In order to provide these individuals with proper health care and health documentation, NIST is pursuing renewal of approval of three health unit forms.

Affected Public: Some Associates, volunteers, and visitors to NIST.

Frequency: As needed.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0080.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15911 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Matching Fund Opportunity for Ocean and Coastal Mapping and Request for Partnership Proposals

AGENCY: Office of Coast Survey (OCS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Announcement of matching fund program opportunity, request for proposals, and request for interest by October 29, 2021.

SUMMARY: This notice establishes selection criteria and requirements for the NOAA Rear Admiral Richard T. Brennan Ocean Mapping Matching Fund program, to be known as the Brennan Matching Fund. The purpose of this notice is to encourage non-Federal entities to partner with the NOAA National Ocean Service ocean and coastal mapping programs on jointly funded ocean and coastal surveys and related activities of mutual interest. NOAA would receive and match partner funds and rely on its existing contract arrangements to conduct the surveying and mapping activities in FY 2023.

DATES: Proposals must be received via email by 5 p.m. ET on October 29, 2021. Applicants must submit via email any accompanying geographic information system (GIS) files, which are due no later than November 5, 2021. If an entity is unable to apply for this particular opportunity but has an interest in participating in similar, future opportunities, NOAA requests a one-page statement of interest, instead of a proposal, also by October 29, 2021, to help gauge whether to offer the Brennan Matching Fund program in future years.

ADDRESSES: Proposals must be submitted in PDF format via email to *iwgocm.staff@noaa.gov* by the October 29, 2021, deadline. NOAA strongly encourages interested entities to submit their proposals in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ashley Chappell, NOAA Integrated Ocean and Coastal Mapping Coordinator, 240–429–0293, or *ashley.chappell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NOAA's Office of Coast Survey (OCS) and National Geodetic Survey (NGS) are responsible for conducting hydrographic surveys and coastal mapping for safe navigation, the conservation and management of coastal and ocean resources, and emergency response. NOAA is committed to meeting these missions as collaboratively as possible, adhering to the Integrated Ocean and Coastal Mapping (IOCM) principle of ''Map Once, Use Many Times.''

One of IOCM's strongest advocates, Rear Admiral Richard T. Brennan, developed an Ocean Mapping Plan for OCS in which IOCM plays a large role. Responsive to the June 2020 publications of the National Strategy for Mapping, Exploring, and Characterizing the U.S. Exclusive Economic Zone

(NOMEC) and the Alaska Coastal Mapping Strategy (ACMS), OCS's Ocean Mapping Plan includes a goal to map the full extent of waters subject to U.S. jurisdiction to modern standards (all three plans are available at *https://iocm.noaa.gov/about/strategic-plans.html*.) Although we lost RDML Brennan tragically and unexpectedly in May 2021, we continue to implement his vision and passion for collaborative ocean mapping through this and other avenues.

The Coast Survey Ocean Mapping Plan describes a number of motivating forces for surveying and mapping waters subject to U.S. jurisdiction, including, but not limited to:

- Safe marine transportation;
- Coastal community resilience;
- A need to better understand the influence of the ocean's composition on related physical and ecosystem processes that affect climate, weather, and coastal and marine resources and infrastructure;
- Interest in capitalizing on the Blue Economy in growth areas like seafood production, tourism and recreation, marine transportation, and ocean exploration;
- The national prerogative to exercise U.S. sovereign rights to explore, manage, and conserve natural resources in waters subject to U.S. jurisdiction; and
- International commitments to map the global oceans by 2030.

Ocean mapping data is needed for safe navigation and also informs decisions regarding emergency planning, climate adaptation and resilience, economic investment, infrastructure development, and habitat protection. Additional sectors that require high-resolution seafloor surveys include deep sea mineral exploration, national security, and maritime domain awareness in the Arctic Ocean. Numerous other fields that rely on high-resolution ocean mapping data include fisheries management and sustainable use of natural resources, offshore renewable energy construction, and tsunami and hurricane modelling. Bathymetry provides critical information for assessing and responding to threats from climate change, sea level rise, flooding, and storm surge, in order to protect our coastal communities and maintain a sustainable economy. However, the resources needed to fully achieve the goal of comprehensively mapping U.S. oceans and coasts currently exceed NOAA's capacity. Mapping the full extent of waters subject to U.S. jurisdiction means relying on partners to contribute to the effort.

Coast Survey has considerable hydrographic expertise, including cutting edge understanding of the science and related acoustic systems. More detail on Coast Survey's surveying expertise and capabilities is available in the NOAA Coast Survey Ocean Mapping Capabilities report (*https://nauticalcharts.noaa.gov/about/docs/about/ocean-mapping-capabilies.pdf*). Information on the Hydrographic Services Contract Vehicle and the types of data and services available can be found at *https://www.nauticalcharts.noaa.gov/data/hydrographic-surveys-contract-vehicle.html.*

The NOAA Coastal Mapping Program under NGS, responsible for updating the shoreline and nearshore bathymetry for application to NOAA Nautical Charts and other coastal applications, relies in part on its NGS Shoreline Mapping Services contract. This contract also supports additional NGS geodetic and surveying missions in support of the National Spatial Reference System and the Aeronautical Survey Program (more information at *https://geodesy.noaa.gov/ContractingOpportunities/*).

Description

This notice announces the Brennan Matching Fund, a program to match funds with NOAA for ocean and coastal survey and mapping partnerships. NOAA will select proposals using the review process and criteria evaluation described under *Review Process and Evaluation Criteria* section of this notice.

The goal of this program is to leverage NOAA and partner funds to acquire more ocean and coastal survey data for mutual benefit, including for safe navigation, integrated ocean and coastal mapping, coastal zone management, coastal and ocean science, climate preparedness, infrastructure investments, and other activities and also to a consistent standard for projects during FY2023. The program relies on NOAA's mapping, charting, and geodesy expertise, appropriated funds, and its authority to receive and expend matching funds contributed by partners to conduct surveying and mapping activities. This program is subject to funding availability. If appropriated funds are available, NOAA will match funds contributed by selected entities for ocean and coastal surveys. NOAA will receive partner funds through memoranda of agreement using the authority granted to NOAA under the Coast and Geodetic Survey Act of 1947 to receive and expend funds for collaborative hydrographic surveys (33 U.S.C. 883e).

In addition to matching partner funds, NOAA will manage survey planning, quality-assure all data and products, provide the data and products to the partners on an agreed-upon timeframe, and handle data submission to the National Centers for Environmental Information for archiving and public accessibility. All ocean and coastal data and related products resulting from this program will be available to the public to the greatest extent allowed by applicable laws.

Specific value-added services NOAA will provide include:

- Project management and GIS-based task order planning, negotiation and award of necessary procurement contracts:
  - Tailored to meet the interests of matching fund partners
  - Managed on aerial, shipboard, and uncrewed/autonomous vehicles
- Data acquisition collection methods include, but are not limited to:
  - Multibeam Echosounder
  - Side Scan Sonar
  - Lidar (topographic, bathymetric, mobile)
  - Subsurface and airborne feature investigations
  - Sediment sampling
- Managing survey compliance with applicable laws, such as the National Environmental Policy Act and National Historic Preservation Act.

Products acquired may include, but not be limited to:

- Bathymetric data (multibeam, single beam, lidar)
- Backscatter
- Water column (depth dependent)
- Side scan sonar imagery
- Feature detection reports
- Sensor/data corrections and calibrations (*e.g.,* conductivity, temperature and depth casts, horizontal/vertical position uncertainty)
- Survey and control services, including the installation, operation, and removal of water level and Global Positioning System stations
- Data processing, quality assessment and review of all acquired hydrographic data
- Data management and stewardship through data archive at the National Centers for Environmental Information
- High-resolution topographic/bathymetric product generation

More information on Coast Survey's Hydrographic Surveys Specifications and Deliverables publication can be found at *https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/*

specs/HSSD_2021.pdf. More information on NGS Specifications and Deliverables can be found at *https://geodesy.noaa.gov/ContractingOpportunities/cmp-sow-v15.pdf.* These specifications are based in part on the International Hydrographic Organization's Standards for Hydrographic Surveys, Special Publication 44 *(https://iho.int/uploads/user/pubs/Drafts/S-44_Edition_6.0.0-Final.pdf).* Background information, questions and answers, and slides that potential applicants might find useful from the expired FY2022 matching fund program webinar are available at *https://iocm.noaa.gov/planning/contracts-grants-agreements.html.*

NOAA would also like to continue to assess interest in the Brennan Matching Fund by eligible, non-Federal entities that do not plan to apply this year but that would consider applying in future years. NOAA welcomes eligible entities to submit a one-page statement of interest by October 29, 2021, to use in evaluating whether to offer the Brennan Matching Fund program in future years.

Areas of Focus

For this opportunity, proposals will be considered that are aligned with national priorities for climate and infrastructure, and the goals of the NOMEC, ACMS, the Coast Survey *Ocean Mapping Plan* (all available at *https://iocm.noaa.gov/about/strategic-plans.html*). Those goals include:

1. *Map the United States Exclusive Economic Zone (EEZ):* The goal is to coordinate mapping efforts to compile a complete map of deep water by 2030 and nearshore waters by 2040. Completing this goal will give the United States unprecedented and detailed information about the depth, shape, and composition of the seafloor of the United States EEZ (NOMEC Goal 2).

2. *Expand Alaska Coastal Data Collection to Deliver the Priority Geospatial Products Stakeholders Require:* Mapping the Alaska coast is challenging. However, using targeted and coordinated data collections will potentially reduce overall costs and improve the cost-to-benefit ratio of expanded mapping activities (ACMS Goal 2).

3. *Map the full extent of waters subject to U.S. jurisdiction to modern standards:* Based on the January 2021 analysis of data holdings at NOAA's National Centers for Environmental Information, 53 percent of waters subject to U.S. jurisdiction are unmapped, covering an area of about 3.6 million square nautical miles (*https://iocm.noaa.gov/seabed-2030-status.html*). Mapping these gap areas would increase U.S. contributions to the global Seabed 2030 Project.

Proposal Eligibility

This matching fund opportunity is available to non-Federal entities. Examples of non-Federal entities include state and local governments, tribal entities, universities, researchers and academia, the private sector, non-governmental organizations (NGOs), and philanthropic partners. Qualifying proposals must demonstrate the ability to provide at least 50 percent matching funds, which must be transferred to NOAA by September 2022 using a memorandum of agreement. A coalition of non-Federal entities may assemble matching funds and submit a proposal jointly. Use of other Federal agency funds as part of the non-Federal entities' match funds will be considered on a case-by-case basis and only as authorized by applicable laws. In-kind contributions are welcome to strengthen the proposal, but do not count toward the match and are not required.

Deadlines and Process Dates

All submissions must be emailed to *iwgocm.staff@noaa.gov.* Partner proposals are due by 5 p.m. ET on October 29, 2021 (see *Submission Requirements*). Please include all required components of the proposal in one email. Incomplete and late submissions will not be considered.

- Informational Webinar, September 9th, 2021, 2 p.m. ET; register at *https://attendee.gotowebinar.com/register/7914808480326041357*
- October 29, 2021: Due date for proposals
- October 29, 2021: Due date for statements of interest regarding potential future proposals
- November 5, 2021: Due date for additional GIS files supporting a proposal
- January 7, 2022: NOAA issues its decisions on proposals (subject to the availability of appropriations)
- February 2022: NOAA works with selected partners to develop memoranda of agreement to facilitate the transfer of funds from the non-Federal partner to NOAA
- May 2022: NOAA finalizes the memoranda of agreement with partners
- June–September 2022: Non-Federal partners transfer matching funds to NOAA; funds must be available to NOAA for contracting in October 2022
- January–September 2023: NOAA issues task orders to its survey contractors for NOAA/partner projects

Funding Availability

In the second year of this program, NOAA anticipates funding between two to five survey projects at a 50 percent match of up to $1 million per project. All projects are expected to have a FY2023 project start date and all non-Federal partner matching funds must be received by NOAA no later than September 2022. NOAA reserves the right to increase or decrease the available amount of matching funds based on the quality and feasibility of proposals received. This notice is subject to the availability of appropriations.

Project Period

NOAA intends to complete each selected project within two years. However, the period to complete a project may be extended, with no additional funding, if additional time is needed. NOAA will submit a final report to the non-Federal partner within 60 days of the conclusion of each project.

Submission Requirements

Project Proposal—To qualify, a proposal shall not exceed six total pages (plus GIS files of project areas) and must include the following three components:

1. A project title; executive summary (three to five sentences); and the names, affiliations, and roles of the project partners and any co-investigators, as well as the project lead that will serve as primary contact (one page maximum).

2. A justification and statement of need; description and graphics of the proposed survey area polygon(s) including relevance to the strategic areas of focus noted under *Areas of Focus* section and degree of flexibility on timing of survey effort (four pages maximum).

3. A project budget that lists the source(s) and amount(s) of funding that the partner would provide as its 50 percent contribution to NOAA. Budget must confirm that partner funds can be transferred to NOAA by September 2022 (one page maximum).

Proposals must use 12-point, Times New Roman font, single spacing, and one inch margins. Failure to adhere to these requirements will result in the proposal being returned without review and eliminated from further consideration. NOAA welcomes the submission of GIS files of project areas noted under *Submission Requirements* as ancillary attachments to the proposal to facilitate review. These files will not count toward the six page proposal

limit. The GIS files must arrive no later than November 5, 2021.

Review Process and Evaluation Criteria

Proposals will be evaluated by the Brennan Matching Fund Program Management Team. Submissions will be ranked based on the following criteria:

1. *Project justification (30 points)*—This criterion ascertains whether there is intrinsic IOCM value in the proposed work and/or relevance to NOAA missions and priorities, including downstream partner proposals and uses. Use of, and reference to, national priorities on climate and infrastructure, NOMEC, ACMS and the Coast Survey Ocean Mapping Plan (all available at *https://iocm.noaa.gov/about/strategic-plans.html*); gap assessment tools such as the U.S. Bathymetry Gap Analysis (*https://iocm.noaa.gov/seabed-2030-bathymetry.html*); and the U.S. Interagency Elevation Inventory (*https://catalog.data.gov/dataset/united-states-interagency-elevation-inventory-usiei*), among others, are recommended. Coast Survey's Hydrographic Health Model showing priority survey areas for navigation safety is available upon request. The U.S. Federal Mapping Coordination site shows current Coast Survey and NGS mapping plans (*fedmap.seasketch.org*); email *iwgocm.staff@noaa.gov* for assistance with the layers on this site if needed.

2. *Statement of need (10 points)*—This criterion assesses clarity of project need, partner project funding alternatives if not selected, anticipated outcomes and public benefit.

3. *Specified partner match (20 points)*—The proposal identifies a point of contact for the entity submitting the proposal, as well as any partnering entities, a clear statement on partner matching funds provenance (*e.g.,* state appropriations, NGO funds, or other sources), and timing of funds availability. In-kind contributions are welcome to strengthen the proposal, but do not count toward the funding match and are not required.

4. *Project costs (15 points)*—This criterion evaluates whether the proposed budget is realistic and commensurate with the proposed project needs and timeframe. If needed, please contact *iwgocm.staff@noaa.gov* for a rough estimate of cost per square nautical mile for surveys in a particular region; this figure will not be exact, as actual cost will be negotiated by region and scale of project.

5. *Project feasibility and flexibility (25 points)*—This criterion assesses the likelihood that the proposal would succeed based on survey conditions at the proposed time of year, such as project size, location, weather, NOAA analysis of environmental compliance implications, project flexibility and adaptability to existing NOAA plans and schedules, and other factors.

During the proposal review period, NOAA reserves the right to engage with proposal points of contact to ask questions and provide feedback on project costs and feasibility.

Management and Oversight

Once selections are made, NOAA will coordinate the development of the memoranda of agreement, funding transfers, project planning, environmental compliance, acquisition awards and quality assurance process. NOAA may bring in additional partners and/or funding (Federal and/or non-Federal) to expand a project further if feasible. Projects will be reviewed by NOAA on an annual basis to ensure they are responsive to partner interests and NOAA mission requirements, and to identify opportunities for outreach and education on the societal benefits of the work.

Authority: The Coast and Geodetic Survey Act of 1947, 33 U.S.C. 883e.

Kathryn Ries,

Performing the Duties of Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–15970 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Southeast Region Family of Forms

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps to assess the impact of information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received by September 27, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *adrienne.thomas@noaa.gov.* Please reference OMB Control Number ''0648–0016'' in the subject line of your comments. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rich Malinowski, National Marine Fisheries Service (NMFS), Sustainable Fisheries Division, 263 13th Avenue S, St. Petersburg, Florida 33701, phone: (727) 824–5305, email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension and revision of a current information collection.

Participants in most federally managed fisheries in the NMFS Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of fishermen on these vessels also provides information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the fishing gear. A subset of fishermen on these vessels also provides information about dockside prices, trip operating costs, and annual fixed costs. An intercept survey for vessels with Federal charter vessel/headboat permits is designed to support and validate the electronic logbooks.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed and existing regulations.

Regulatory Amendment 29 effective July 15, 2020 would require at least one descending device to be on board and ready for use on commercial, for-hire, and private recreational vessels while fishing for or possessing snapper-grouper species in the South Atlantic.

Most recently the Descend Act was passed, which added a new section 321 to the Magnuson-Stevens Fishery Conservation and Management Act. This requires commercial and recreational fishermen to possess a venting tool or descending device that is rigged and ready for use when fishing for reef fish in the Gulf Exclusive Economic Zone.

Descending devices increase survivability from barotrauma, which is injury caused by internal gas expansion when reeled up from depth. In addition to being asked to report the number of fish released respondents would be asked to report the number of fish released with descending devices as part of their current logbook submissions. The purpose of asking respondents to distinguish between fish releases without descending devices and fish released with descending devices is to provide data needed by NMFS to accurately account for fishing mortality when performing stock assessments.

NMFS seeks to revise this collection to add an additional question to the recreational Headboat part of the collection to make it more consistent with the data collected through the commercial discard logbook. The new column (#DESCENDED) will be added to the (#KEPT) and (#RELEASED) columns that are currently on the form. This will provide fishermen an opportunity to report which unwanted fish will be released to the bottom of the ocean, providing them a better chance at survival.

II. Method of Collection

The information is submitted on paper forms and electronic transmissions. The intercept survey is collected through in-person interviews at verified landing locations.

III. Data

OMB Control Number: 0648–0016.

Form Number(s): None.

Type of Review: Regular submission (extension and revision of a current information collection).

Affected Public: Businesses or other for-profit organizations; individuals.

Estimated Number of Respondents: 6,971.

Estimated Time per Response: Annual fixed-cost report, 45 minutes; discard logbook, 15 minutes; headboat, charter vessel, golden crab, reef fish-mackerel, economic cost per trip, wreckfish, 10 minutes; no-fishing report for golden crab, reef fish-mackerel, charter vessels, and wreckfish, 2 minutes; installation of a vessel monitoring unit, 5 hours; landing location request and power-down exemption request, 5 minutes; trip declaration, 2 minutes; and proposed intercept survey, 15 minutes.

Estimated Total Annual Burden Hours: 69,752.

Estimated Total Annual Cost to Public: $1,706,211.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

NMFS is soliciting public comments to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of the time and cost burden estimates for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. NMFS will include or summarize each comment in our request to OMB to approve this information collection request. 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 may ask us in your comment to withhold your personal identifying information from public review, NMFS cannot guarantee that will occur.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15955 Filed 7–26–21; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Program Life Cycle Evaluation—Opioid Recovery Coach Model Bundled Evaluation

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled AmeriCorps Program Life Cycle Evaluation—Opioid Recovery Coach Model Bundled Evaluation for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Xiaodong Zhang, at 703–251–0883 or by email to *xiaodong.zhang@icf.com.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on May 17, 2021 at 26702–26703. This comment period ended July 16, 2021. No public comments were received from this Notice.

Title of Collection: AmeriCorps Program Life Cycle Evaluation—Opioid Recovery Coach Model Bundled Evaluation.

OMB Control Number: TBD. Type of Review: New.

Respondents/Affected Public: Grantees, program implementers, volunteer organizations and volunteers.

Total Estimated Number of Annual Responses: 422 respondents.

Total Estimated Number of Annual Burden Hours: 218 hours.

Abstract: The purpose of this evaluation is to study questions regarding grantees' use of the peer recovery coach model and better determine how effective the model is at increasing individuals' recovery capital, increasing attendance of health services, and decreasing incidence of substance use as well as on the peer recovery coaches and grantee organizations. The research questions for this evaluation are:

1. Determine what recovery coach models look like (activity, setting, modality, etc.).

2. Describe promising practices and challenges in implementing these models.

3. Measure the effectiveness of the recovery coach model in improving outcomes for grantee organizations, recovery coaches, and beneficiaries.

AmeriCorps will conduct a bundled evaluation of grantees that are implementing opioid recovery coaching models. Bundling allows AmeriCorps to combine a group of small programs across different funding streams with similar program models and intended outcomes into a single evaluation. Spanning 27 months, the evaluation will work with 14 grantees to examine program design, implementation, and outcomes using surveys, interviews, and focus groups with a wide range of stakeholders, including grantee staff, volunteers who support the peer recovery coach model, beneficiaries, and staff at organizations which partner with grantees. This is a new information collection.

Dated: July 21, 2021.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2021–15913 Filed 7–26–21; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Program Life Cycle Evaluation—Volunteer Generation Fund Grant Program Evaluation

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled AmeriCorps Program Life Cycle Evaluation—Volunteer Generation Fund Grant Program Evaluation for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Xiaodong Zhang, at 703–251–0883 or by email to *xiaodong.zhang@icf.com.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on May 17, 2021 at 26703–26704. This comment period ended July 16, 2021. No public comments were received from this Notice.

Title of Collection: AmeriCorps Program Life Cycle Evaluation—Volunteer Generation Fund Grant Program Evaluation.

OMB Control Number: TBD. Type of Review: New.

Respondents/Affected Public: Grantees, program implementers, volunteer organizations and volunteers.

Total Estimated Number of Annual Responses: 914 respondents.

Total Estimated Number of Annual Burden Hours: 392 hours.

Abstract: The purpose of this evaluation is to understand grantees' use of Volunteer Generation Fund (VGF) grant program funds to support volunteer organizations and determine how effective grantees' approaches are at enhancing the capacity of these organizations, increasing volunteer recruitment and retention, and increasing implementation of volunteer management best practices within their states. The research questions for this evaluation are:

1. What are the grantees' approaches for utilizing VGF funds to improve volunteer recruitment, retention, and support of volunteers within their states and among volunteer organizations?

2. What are promising practices and challenges in implementing these programs?

3. What are preliminary outcomes of these programs on volunteer organizations?

ICF will conduct a bundled evaluation of grantees that are using VGF funds to increase recruitment and retention efforts within their states. By bundling, this evaluation combines a group of state commissions with similar program approaches into a single evaluation. Spanning 27 months, the evaluation includes 14 grantees to examine program design, implementation, and outcomes using surveys, interviews, and focus groups with a wide range of stakeholders including grantee staff, program implementers, volunteer organizations, and volunteers. This is a new information collection.

Dated: July 21, 2021.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2021–15933 Filed 7–26–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2955–011]

City of Watervliet, New York; Notice of Waiver Period for Water Quality Certification Application

On July 12, 2021, the City of Watervliet, New York filed with the

Federal Energy Regulatory Commission a copy of its application for a Clean Water Act section 401(a)(1) water quality certification submitted to New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6, we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: July 12, 2021.

Reasonable Period of Time to Act on the Certification Request: One year.

Date Waiver Occurs for Failure to Act: July 12, 2022.

If New York DEC fails or refuses to act on the water quality certification request by the above waiver date, then the agency's certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: July 21, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15926 Filed 7–26–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket No.
West Medway II, LLC	EG21–119–000
BMP Wind LLC	EG21–120–000
Kei Mass Energy Storage I, LLC	EG21–121–000
Niyol Wind, LLC	EG21–122–000
Clines Corners Wind Farm LLC	EG21–123–000
Duran Mesa LLC	EG21–124–000
Red Cloud Wind LLC	EG21–125–000
Tecolote Wind LLC	EG21–126–000
Samson Solar Energy III LLC	EG21–127–000
Triple Butte LLC	EG21–128–000
St-Felicien, Societe en commandite	EG21–129–000
Irish Creek Wind, LLC	EG21–130–000
Heartland Divide Wind II, LLC	EG21–131–000
Little Blue Wind Project, LLC	EG21–132–000
Sac County Wind, LLC	EG21–133–000
Minco Wind Energy II, LLC	EG21–134–000
SP Garland Solar Storage, LLC	EG21–135–000
SP Tranquillity Solar Storage, LLC	EG21–136–000
BLCP Power Limited	FC21–3–000
Chaiyaphum Wind Farm Company Limited	FC21–4–000
EGCO Cogeneration Company Limited	FC21–5–000
G-Power Source Company Limited	FC21–6–000
Gulf Power Generation Company Limited	FC21–7–000
Gulf Yala Green Company Limited	FC21–8–000
Nam Theun 2 Power Company Limited	FC21–9–000
Natural Energy Development Company Limited	FC21–10–000
Nong Khae Cogeneration Company Limited	FC21–11–000
Paju Energy Services Company Limited	FC21–12–000
PT Darajat Geothermal Indonesia	FC21–13–000
Roi-Et Green Company Limited	FC21–14–000
San Buenaventura Power Limited Company	FC21–15–000
Solarco Company Limited	FC21–16–000
Star Energy Geothermal Darajat I, Ltd	FC21–17–000
Star Energy Geothermal Darajat II, Ltd	FC21–18–000
Star Energy Geothermal Salak, Ltd	FC21–19–000
Star Energy Geothermal Salak Pratama, Ltd	FC21–20–000
Star Energy Geothermal (Wayang Windu) Ltd	FC21–21–000
Theppana Wind Farm Company Limited	FC21–22–000
Xayaburi Power Company Limited	FC21–23–000
Convergent Canada Companies	FC21–24–000

Take notice that during the month of June 2021, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: July 21, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15925 Filed 7–26–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–107–000.

Applicants: Lincoln Land Wind, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Lincoln Land Wind, LLC.

Filed Date: 7/20/21.

Accession Number: 20210720–5124.

Comments Due: 5 p.m. ET 8/10/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–198–000.

Applicants: Glacier Sands Wind Power, LLC.

Description: Notice of Self-Certification of Exempt Wholesale

Generators Status of Glacier Sands Wind Power, LLC.

Filed Date: 7/21/21.

Accession Number: 20210721–5073.

Comments Due: 5 p.m. ET 8/11/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2108–005.

Applicants: Great Bay Solar II, LLC.

Description: Compliance filing: Compliance Filing (ER20–2108–000, et al) to be effective 8/19/2020.

Filed Date: 7/21/21.

Accession Number: 20210721–5045.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–40–000.

Applicants: ConocoPhillips Company.

Description: Supplement to Cost Justification Filing of ConocoPhillips Company.

Filed Date: 7/19/21.

Accession Number: 20210719–5148.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–42–000.

Applicants: Tenaska Power Services Co.

Description: Tenaska Power Services Co. submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5222.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–47–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5213.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–52–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5216.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–56–000.

Applicants: Guzman Energy, LLC.

Description: Guzman Energy LLC submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/16/21.

Accession Number: 20210716–5192.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–58–000.

Applicants: TransAlta Energy Marketing (U.S.) Inc.

Description: TransAlta Energy Marketing (U.S.) Inc. submits Supplement to October 7, 2020 Notice and Justification for Spot Sales above Soft Cap.

Filed Date: 7/19/21.

Accession Number: 20210719–5154.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–60–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5219.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–62–000.

Applicants: Uniper Global Commodities North America LLC.

Description: Uniper Global Commodities North America LLC submits Supplement to October 7, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5214.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–65–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tri-State Generation and Transmission Association, Inc. submits Amended and Restated Soft Price Cap Report for August 2020.

Filed Date: 7/19/21.

Accession Number: 20210719–5104.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–135–000.

Applicants: EDF Trading North America, LLC.

Description: EDF Trading North America, LLC submits Supplement to October 16, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5223.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–434–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits Supplement to November 18, 2020 Cost Justification Filing.

Filed Date: 7/19/21.

Accession Number: 20210719–5217.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: ER21–1994–001.

Applicants: El Paso Electric Company.

Description: Tariff Amendment: Service Agreement No. 353, LGIA with National Grid Renewables to be effective 12/31/9998.

Filed Date: 7/20/21.

Accession Number: 20210720–5094.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: ER21–2466–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Notice of Cancellation of the Operation and Maintenance Agreement (Service Agreement No. 259) of Northern States Power Company, a Minnesota corporation.

Filed Date: 7/20/21.

Accession Number: 20210720–5062.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: ER21–2468–000.

Applicants: PacifiCorp, Nevada Power Company, Sierra Pacific Power Company.

Description: Joint Petition for Limited Waiver of PacifiCorp, et al.

Filed Date: 7/19/21.

Accession Number: 20210719–5221.

Comments Due: 5 p.m. ET 7/26/21.

Docket Numbers: ER21–2469–000.

Applicants: Renewable World Energies, LLC.

Description: Request for Limited Waiver, et al. of Renewable World Energies.

Filed Date: 7/21/21.

Accession Number: 20210721–5024.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2470–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–OCI Sunray System Upgrade Agreement to be effective 7/7/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5033.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2471–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-House Mountain Generation Interconnection Agreement to be effective 7/7/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5037.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2472–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission submits Revised IA SA No. 4577 to be effective 9/21/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5039.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2473–000.

Applicants: Liberty Utilities (Granite State Electric) Corp.

Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update Revised per PUC Order July 2021 to be effective 7/1/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5048.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2474–000.

Applicants: Pleinmont Solar 2, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/23/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5061.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2475–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6033; Queue No. AG1–337 to be effective 6/21/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5088.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2476–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6118; Queue No. AG1–330 to be effective 6/21/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5092.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2477–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 328 between Tri-State and Mountain View to be effective 7/22/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5109.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2478–000.

Applicants: Milford Power Company, LLC.

Description: § 205(d) Rate Filing: Administrative Cancellations and Revisions to Tariffs to be effective 9/20/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5115.

Comments Due: 5 p.m. ET 8/11/21.

Docket Numbers: ER21–2479–000.

Applicants: Illinois Power Marketing Company.

Description: Compliance filing: Administrative Cancellations and Revisions to Tariffs to be effective 9/20/2021.

Filed Date: 7/21/21.

Accession Number: 20210721–5116.

Comments Due: 5 p.m. ET 8/11/21.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–14–000.

Applicants: NextEra Energy, Inc.

Description: NextEra Energy, Inc. submits FERC–65B Notice of Non-Material Change in Fact to Waiver Notification.

Filed Date: 7/21/21.

Accession Number: 20210721–5094.

Comments Due: 5 p.m. ET 8/11/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 21, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15927 Filed 7–26–21; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: July 28, 2021; 10:00 a.m.

PLACE: This meeting will be held by video-conference only.

STATUS: Part of this meeting will be open to the public and will be streamed live, accessible from *www.fmc.gov.* The rest of the meeting will be closed to the public.

PORTIONS OPEN TO THE PUBLIC:

1. Commissioner Bentzel, Update on Equipment Manufacturing and Availability Research
2. Commissioner Dye, Interim Recommendations International Ocean Transportation Supply Chain Engagement, Fact Finding 29
3. Passenger Vessel Financial Responsibility

PORTIONS CLOSED TO THE PUBLIC:

1. Investigation into Conditions Created by Canadian Ballast Water Regulations in the U.S./Canada Great Lakes Trade

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Authority: 5 U.S.C. 552b.

Rachel Dickon,

Secretary.

[FR Doc. 2021–15880 Filed 7–23–21; 4:15 pm]

BILLING CODE 6730–02–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: July 27, 2021, 10:00 a.m.–11:30 a.m.

PLACE: Via tele-conference.

STATUS: Meeting of the Board of Directors, open to the public.

MATTERS TO BE CONSIDERED:

- Call to order
- IAF President/CEO Report
- Management Team Updates
- Adjournment

Portion to be Closed to the Public:

- Executive session closed to the public as provided for by 22 CFR 1004.4(b)

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel, (202) 683–7118.

For Dial-in Information Contact: Karen Vargas, Board Liaison, (202) 524–8869.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Aswathi Zachariah,

General Counsel.

[FR Doc. 2021–15966 Filed 7–23–21; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–IEV–NPS0031819; PPWOIEADC0, PPMVSIE1Y.Y00000 (211); OMB Control Number 1024–NEW]

Agency Information Collection Activities; Education Reservation Request Form

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 26, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–NEW (EdForm) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about

this ICR, contact Linda Rosenblum, Education Program Manager, by email at *linda_rosenblum@nps.gov,* or by telephone at 202–577–6469. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 19, 2021 (86 FR 5247). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by 54 U.S.C. 100701 Protection, interpretation, and research in System to administer education programs for audiences including but not limited to school groups, scouting groups, extracurricular groups, and home school groups. To effectively manage requests received for NPS educational programs, the NPS Washington Support Office Division of Interpretation, Education, and Volunteers seeks approval for the use of a new Service-wide form, the Education Reservation Request Form.

The proposed form would collect necessary reservation information, including: (1) Person(s) or organization(s) requesting education program services, (2) type of program requested, (3) logistical details including, date, time, grade level, number of students, (4) technology available to group for distance learning programming, and (5) criteria for academic fee waiver eligibility.

This information will facilitate operational aspects of scheduling groups for in-park education programs, ranger in classroom programs, and/or online distance learning programs. The form will be fully electronic and available on participating parks websites for the purpose of making school group reservations and accommodating public requests for group education programming.

Title of Collection: Education Reservation Request Form.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Educators at public and private schools, homeschool groups, school-age clubs.

Total Estimated Number of Annual Respondents: 62,000.

Total Estimated Number of Annual Responses: 62,000.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 5,167.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2021–15899 Filed 7–26–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–ANIA–DENA–CAKR–LACL–KOVA–WRST–GAAR–32018; PPAKAKROR4; PPMPRLE1Y.LS0000]

National Park Service Alaska Region Subsistence Resource Commission Program; Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), the Denali National Park SRC, the Cape Krusenstern National Monument SRC, the Lake Clark National Park SRC, the Kobuk Valley National Park SRC, the Wrangell-St. Elias National Park SRC, and the Gates of the Arctic National Park SRC will meet as indicated below.

DATES: The Aniakchak National Monument SRC will meet via teleconference from 1:30 p.m. to 5:00 p.m. or until business is completed on Tuesday, October 19, 2021. The alternate meeting date is Wednesday, October 20, 2021, from 1:30 p.m. to 5:00 p.m. or until business is completed at the same location. Teleconference participants must call the NPS office at (907) 246–2154 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Mark Sturm, Superintendent, at (907) 246–2120, or via email at *mark_sturm@nps.gov,* or Linda Chisholm, Subsistence Coordinator, at (907) 246–2154 or via email at *linda_chisholm@nps.gov,* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Denali National Park SRC will meet in-person or via teleconference from 10:00 a.m. to 5:00 p.m. or until business is completed on Thursday, August 12, 2021. The alternate meeting date is Thursday, August 26, 2021, from 10:00 a.m. to 5:00 p.m. or until business

is completed at the same location. Teleconference participants must call the NPS office at (907) 644–3604 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Brooke Merrell, Deputy Superintendent, at (907) 683–9627, or via email at *brooke_merrell@nps.gov* or Amy Craver, Subsistence Coordinator, at (907) 644–3604 or via email at *amy_craver@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Cape Krusenstern National Monument SRC will meet in-person or via teleconference from 1:00 p.m. to 5:00 p.m. on Tuesday, October 26, 2021, and from 9:00 a.m. to 12:00 p.m. on Wednesday, October 27, 2021, or until business is completed. The alternate meeting dates are Tuesday, November 2, 2021, from 1:00 p.m. to 5:00 p.m., and Wednesday, November 3, 2021, from 9:00 a.m. to 12:00 p.m. or until business is completed at the same location. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Peter Christian, Acting Superintendent, at (907) 644–3512, or via email at *peter_christian@nps.gov,* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Lake Clark National Park SRC will meet in-person or via teleconference from 1:00 p.m. to 4:00 p.m. or until business is completed on Wednesday, September 29, 2021. The alternate meeting date is Wednesday, October 6, 2021, from 1:00 p.m. to 4:00 p.m. or until business is completed at the same location. Teleconference participants must call the NPS office at (907) 644–3648 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Susanne Green, Superintendent, at (907) 644–3627, or via email at *susanne_green@nps.gov* or Liza Rupp, Subsistence Manager, at (907) 644–3648 or via email at *elizabeth_rupp@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Kobuk Valley National Park SRC will meet in-person or via teleconference from 1:00 p.m. to 5:00 p.m. on Thursday, October 28, 2021, and from 9:00 a.m. to 12:00 p.m. on Friday, October 29, 2021, or until business is completed. The alternate meeting dates are Thursday, November 4, 2021, from 1:00 p.m. to 5:00 p.m., and Friday, November 5, 2021, from 9:00 a.m. to 12:00 p.m. or until business is completed at the same location. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Peter Christian, Acting Superintendent, at (907) 644–3512, or via email at *peter_christian@nps.gov,* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Wrangell-St. Elias National Park SRC will meet in-person or via teleconference from 9:00 a.m. to 5:00 p.m. on Tuesday, September 28, 2021, and from 9:00 a.m. to 5:00 p.m. or until business is completed on Wednesday September 29, 2021. If business is completed on September 28, 2021, the meeting will adjourn, and no meeting will take place on September 29, 2021. The alternate meeting dates are Tuesday, October 5, 2021, from 9:00 a.m. to 5:00 p.m., and Wednesday, October 6, 2021, from 9:00 a.m. to 5:00 p.m. or until business is completed at the same location. Teleconference access to the meeting may be requested by calling the NPS office at (907) 822–7236 at least two business days prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Ben Bobowski, Superintendent, (907) 822–5234, or via email at *ben_bobowski@nps.gov* or Barbara Cellarius, Subsistence Coordinator, at (907) 822–7236 or via email at *barbara_cellarius@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

The Gates of the Arctic National Park SRC will meet in-person or via teleconference from 8:30 a.m. to 5:00 p.m. or until business is completed on both Tuesday, November 9, 2021, and Wednesday, November 10, 2021. The alternate meeting dates are Tuesday, November 16, 2021, from 8:30 a.m. to 5:00 p.m., and Wednesday, November 17, 2021, from 8:30 a.m. to 5:00 p.m. or until business is completed at the same location. Teleconference participants must call the NPS office at (907) 455–0639 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Greg Dudgeon, Superintendent, at (907) 457–5752, or via email at *greg_dudgeon@nps.gov* or Marcy Okada, Subsistence Coordinator, at (907) 455–0639 or via email at *marcy_okada@nps.gov* or Joshua Ream, Federal Advisory Committee Group Federal Officer, at (907) 644–3596 or via email at *joshua_ream@nps.gov.*

ADDRESSES: The Aniakchak National Monument SRC will meet via teleconference. The Denali National Park SRC will meet in-person in the Community Hall, Cantwell Community Center, Milepost 1 Denali Highway, Cantwell, AK 99729 or in Classroom B, at the Murie Science Learning Center, 237 Parks Highway, Denali National Park and Preserve, AK 99755. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference. The Cape Krusenstern National Monument SRC will meet in-person in the conference room at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference. The Lake Clark National Park SRC will meet in-person at the Nondalton Community Building, 49 Main St, Nondalton, AK 99640. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference. The Kobuk Valley National Park SRC will meet in-person in the conference room at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference. The Wrangell-St. Elias National Park SRC will meet in-person at the NPS office in the Copper Center Visitor Center Complex, Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, AK 99573 and via teleconference. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference. The Gates of the Arctic National Park SRC will meet in-person in Zach's Boardroom Sophie Station

Hotel, 1717 University Avenue S, Fairbanks, AK 99709. If an in-person meeting is not feasible or advisable, the meeting will be held solely by teleconference.

SUPPLEMENTARY INFORMATION: The NPS is holding meetings pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 1–16). The NPS SRC program is authorized under title VIII, section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118).

SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

Purpose of the Meeting: The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Staff Reports
    a. Superintendent/Ranger Reports
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

SRC meeting location and date may change based on inclement weather or exceptional circumstances, including public health advisories or mandates. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting.

Public Disclosure of Comments: 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: 5 U.S.C. appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–15972 Filed 7–26–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–TUSK–31997; PPPWTUSK00, PPMPSPD1Z.YM0000]

Tule Springs Fossil Beds National Monument Advisory Council Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service is hereby giving notice that the Tule Springs Fossil Beds National Monument Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on Wednesday, August 11, 2021, at 5:00 p.m. until 7:00 p.m. (PACIFIC). A teleconference may substitute for an in-person meeting if public health restrictions are in effect.

ADDRESSES: The meeting will be held at 11357 N Decatur Boulevard, CCSP08, Las Vegas, Nevada 89131.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Christie Vanover, Public Affairs Officer, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 293–8691, or email at *christie_vanover@nps.gov.*

SUPPLEMENTARY INFORMATION: The Council was established pursuant to Section 3092(a)(6) of Public Law 113–291 and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The purpose of the Council is to advise the Secretary of the Interior with respect to the preparation and implementation of the management plan.

Purpose of the Meeting: The Council agenda will include:

1. Superintendent Update
   - Update on General Management Plan Pre-Planning
   - Update on Tufa Trail
2. Subcommittee Update on Parking Areas
3. Resource Management Update
4. Discussion of Council Priorities
5. Elect New Council Chair
6. Public Comments

A teleconference may substitute for an in-person meeting if public health restrictions are in effect. In the event of a switch to teleconference, notification and access information will be posted by August 6, 2021, to the Committee's website at *https://www.nps.gov/tusk/index.htm.*

The meeting is open to the public. Interested persons may make oral or written presentations to the Council during the business meeting or file written statements. Such requests should be made to the Superintendent prior to the meeting. Members of the public may submit written comments by mailing them to Derek Carter, Superintendent, 601 Nevada Way, Boulder City, NV 89005, or by email *derek_carter@nps.gov.* All written comments will be provided to members of the Council.

Due to time constraints during the meeting, the Council is not able to read written public comments submitted into the record. Requests by individuals seeking to make oral comments during the meeting should be made to the Superintendent prior to the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited.

Public Disclosure of Comments: 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: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–15974 Filed 7–26–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1272]

Certain Integrated Circuits and Products Containing Same; Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 21, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of MediaTek Inc. of Taiwan and MediaTek USA Inc. of San Jose, California. Supplements to the complaint were filed on July 9, 2021. 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 integrated circuits and products containing same by reason of infringement of certain claims of U.S. Patent No. 8,772,928 (''the '928 patent''); U.S. Patent No. 7,231,474 (''the '474 patent''); U.S. Patent No. 10,264,580 (''the '580 patent''); U.S. Patent No. 10,616,017 (''the '017 patent''); and U.S. Patent No. 10,200,228 (''the '228 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, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: *Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 21, 2021, *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 1–16 of the '928 patent; claims 1, 3, 4, 7–10, 14–16, 19, and 20 of the '474 patent; claims 13, 19–22, and 24 of the '580 patent; claims 5–7 and 13–17 of the '017 patent; and claims 11–20 of the '228 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 ''NXP integrated circuits and evaluation boards; and modules, control units, navigation systems, and infotainment systems that contain NXP integrated circuits;''

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(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:

MediaTek Inc., No. 1, Dusing Road 1, Hsinchu Science Park, Hsinchu City 30078, Taiwan

MediaTek USA Inc., 2840 Junction Avenue, San Jose, California 95134

(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:

NXP Semiconductors N.V., High Tech Campus 60, 5656 AG Eindhoven, Netherlands

NXP USA, Inc., 6501 W. William Cannon Dr., Austin, TX 78735

Avnet, Inc., 2211 South 47th Street, Phoenix, AZ 85034

Arrow Electronics, Inc., 9201 East Dry Creek Road, Centennial, CO 80112

Mouser Electronics, Inc., 1000 North Main Street, Mansfield, TX 76063

Continental AG, Vahrenwalder Strasse 9, 30165 Hanover, Germany

Continental Automotive GmbH, Vahrenwalder Strasse 9, 30165 Hanover, Germany

Continental Automotive Systems, Inc., 1 Continental Drive, Auburn Hills, MI 48326

Robert Bosch GmbH, Robert-Bosch-Platz 1, 70839 Gerlingen-Schillerhöhe, Germany

Robert Bosch LLC, 38000 Hills Tech Drive, Farmington Hills, MI 48331

(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), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants 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: July 21, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–15906 Filed 7–26–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0067]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0067 (Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data) is being revised due to an increase in respondents, although the total responses and burden hours have reduced since the last renewal in 2018. This information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until September 27, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Dawn Smith, ATF Firearms Industry Programs Branch, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *fipb-informationcollection@atf.gov,* or by telephone at 202–648–0890.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: Firearms manufacturers must create and maintain permanent records of all firearms manufactured and disposed of. These records support the Bureau of Alcohol, Tobacco, Firearms and Explosives' mission to inquire into the disposition of any firearm, during the course of during the course a criminal investigation.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,513 respondents will respond 677.12822 times per year to this information collection, and it will take each respondent approximately 1.06 minutes to complete a response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 123,801 hours, which is equal to 10,513 (# of respondents) * 677.12822 (# of responses per respondent) * .0176728 (1.06 minutes).

7. *An Explanation of the Change in Estimates:* The increase in total respondents by 1,457, is due to more firearms manufacturers responding to this collection. However, the total responses and burdens hours decreased by 4,378,792 and 75,4040 hours respectively, because less firearms were produced since the last renewal of this collection in 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3E.405A, Washington, DC 20530.

Dated: July 22, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–15946 Filed 7–26–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**. The following transaction was granted early termination—on the date indicated—of the waiting period provided by law and the premerger notification rules. The listing includes the transaction number and the parties to the transaction. The Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice made the grants. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATION GRANTED
[07/21/2021]

20211736	G	Green Dot Corporation; Republic Bancorp, Inc.; Republic Bank & Trust Company.

Suzanne Morris,
Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.
[FR Doc. 2021–15904 Filed 7–26–21; 8:45 am]
BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–866]

Importer of Controlled Substances Application: Catalent Pharma Solutions, LLC.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Catalent Pharma Solutions, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 26, 2021. Such persons may also file a written request for a hearing on the application on or before August 26, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 2, 2021, Catalent Pharma Solutions, LLC., 3031 Red Lion Road, Philadelphia, Pennsylvania 19114, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Lysergic Acid Diethylamide	7315	I

The company plans to import the above controlled substances as finished dosage unit products for clinical trials, research, and analytical activities. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,
Acting Assistant Administrator.
[FR Doc. 2021–15919 Filed 7–26–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–867]

Bulk Manufacturer of Controlled Substances Application: Novitium Pharma, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Novitium Pharma, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 27, 2021. Such persons may also file a written request for a hearing on the application on or before September 27, 2021.

ADDRESS: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on June 17, 2021, Novitium Pharma, LLC., 70 Lake Drive, East Windsor, New Jersey 08520, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7347	I
Psilocyn	7348	I

The company plans to bulk manufacture the above controlled substances to produce Active Pharmaceutical Ingredient (API) and finished dosage forms for clinical trial purposes. No other activities for these drug codes are authorized for this registration.

Brian S. Besser,
Acting Assistant Administrator.
[FR Doc. 2021–15920 Filed 7–26–21; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 16, 2021, the U.S. Department of Justice (DOJ) lodged a proposed Amendment to Consent Decree with the United States District Court for the Northern District of Indiana in *United States and State of Indiana* v. *City of Elkhart, Indiana,* Civil Action No. 2:11CV328. The lodging of the proposed Amendment to Consent Decree, by the United States on behalf of the U.S. Environmental Protection Agency, with the concurrence of the State of Indiana on behalf of the Indiana Department of Environmental Management, modifies the Consent Decree in this action that was entered by the Court on November 30, 2011.

The 2011 Consent Decree resolved claims for civil penalties as well as injunctive relief in the form of a Long Term Control Plan (LTCP) for violations of the Clean Water Act and related State law claims in connection with the City of Elkhart's operation of its municipal wastewater and sewer system. The proposed Amendment to Consent Decree modifies the LTCP by allowing the City to change the technology

currently used to treat the wastewater originating from its combined sewer system, allowing one additional year to implement such change.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Indiana* v. *City of Elkhart, Indiana,* D.J. Ref. No. 90–5–1–1–08202. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment–ees.enrd@usdoj.gov.*
By mail	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.25 (25 cents per page reproduction cost), payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–15934 Filed 7–26–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cotton Dust Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the cotton dust standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to cotton dust. Employers must monitor employee exposure, reduce employee exposure to within permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure monitoring and medical records. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 27, 2021 (86 FR 22277).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Cotton Dust Standard.

OMB Control Number: 1218–0061.

Affected Public: Private Sector: Business or other for-profits.

Total Estimated Number of Respondents: 4,543.

Total Estimated Number of Responses: 17,217.

Total Estimated Annual Time Burden: 6,379 hours.

Total Estimated Annual Other Costs Burden: $845,662.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–15931 Filed 7–26–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bloodborne Pathogens Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Bloodborne Pathogen Standard is an occupational safety and health standard that prevents occupational exposure to bloodborne pathogens. The standard's information collection requirements are essential components that protect workers from occupational exposure. The information is used by employers and workers to implement the protection required by the Standard. OSHA compliance officers will use some of the information in their enforcement of the Standard. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 15, 2021 (86 FR 19904).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Bloodborne Pathogens Standard.

OMB Control Number: 1218–0180.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 701,563.

Total Estimated Number of Responses: 26,841,471.

Total Estimated Annual Time Burden: 5,720,498 hours.

Total Estimated Annual Other Costs Burden: $52,516,112.50.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–15932 Filed 7–26–21; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Capital Planning and Stress Testing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before September 27, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0199.

Title: Capital Planning and Stress Testing, 12 CFR part 702, subpart E.

Type of Review: Extension of a currently approved collection.

Abstract: To protect the National Credit Union Share Insurance Fund (NCUSIF) and the credit union system, the largest Federally Insured Credit Unions (FICUs) must have systems and processes to monitor and maintain their capital adequacy. The rule requires covered credit unions to develop and maintain a capital plan and submit this plan to NCUA by March 31 of each year. The rule applies to all FICUs that report $10 billion or more in assets on their March 31 Call Report.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 18.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 18.

Estimated Burden Hours per Response: 223.89.

Estimated Total Annual Burden Hours: 4,030.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on July 20, 2021.

Dated: July 22, 2021.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2021–15924 Filed 7–26–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA 2021–0102]

Request for Information and Comment on Digital Assets and Related Technologies

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice; request for information and comment.

SUMMARY: The NCUA Board (Board) is gathering information and soliciting comments from interested parties

regarding the current and potential impact of activities connected to digital assets and related technologies on federally insured credit unions (FICUs), related entities, and the NCUA. The NCUA is broadly interested in receiving input on commenters' views in this area, including current and potential uses in the credit union system, and the risks associated with them.

DATES: Comments must be received on or before September 27, 2021 to ensure consideration.

ADDRESSES: You may submit comments by any one of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for NCUA Docket 2021–0102.
- *Fax:* (703) 518–6319. Include ''[Your name] Comments on ''Request for Information and Comment on Digital Assets and Related Technologies.''
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Scott Borger, Senior Financial Modeler and Todd Sims, National Payment Systems Officer, Office of National Examinations and Supervision, (703) 518–6640; *Legal:* Thomas Zells, Senior Staff Attorney, Office of General Counsel, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

NCUA Overview

The NCUA is an independent federal agency that insures shares at FICUs, protects the members who own credit unions, and charters and regulates federal credit unions (FCUs). The NCUA is charged with protecting the safety and soundness of credit unions and, in turn, the National Credit Union Share Insurance Fund (NCUSIF) through regulation and supervision. The NCUA's mission is to ''provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.'' [1] The NCUA also works to protect credit union members and consumers. Consistent with these aims, the NCUA has statutory responsibility for a wide variety of regulations that protect the credit union system, members, and the NCUSIF.

Decentralized Finance, Digital Assets, and Related Technologies

Decentralized Finance (DeFi) is the broad category of applications adopting peer-to-peer networks, Distributed Ledger Technology (DLT), and related uses, such as smart contracts, to create digital assets like cryptocurrency and crypto-assets, clearing and settlement systems, identity management systems, and record retention systems.[2] As noted, DLT is the digital process to record transactions that are behind many of these innovations. DLT consists of a shared electronic database where copies of the same information are stored on a distributed network of computers. This shared immutable digital ledger both ensures the data cannot be altered and serves to add new information to the database. Information is only added to the distributed ledger when consensus is reached that the information is valid. As a result, any attempt to modify the information on one computer will not impact the information on other computers. ''Blockchains'' are one type of distributed ledger. In a blockchain, a chronological record of all transactions is created and stored on the ledger by sequentially grouping all transactions together in blocks.

Digital assets can be transferred between two people without an intermediary. However, as a practical matter, most members of the public do not have a means of converting dollars into digital assets on their own. Software developers and entrepreneurs have created exchanges to facilitate the exchange of dollars for digital assets and digital wallets to provide customers a convenient way to store their encryption keys required to verify ownership of their digital assets. These entities serve as intermediaries in the new digital ledger payment systems.

Since the introduction of DLT, thousands of projects have used the technology to lower the cost of verifying ownership, storing distributed data, or tracking information. The projects have covered everything from tracking ownership in national land registries to tracking the history of a product in the food supply chain. While DeFi offers a number of potential benefits and opportunities for the credit union system, it also presents several risks, for example: (1) The permanent nature of the transactions necessitates questions about consumer recourse for fraudulent financial activities; (2) the ability to source funds for new projects has the downside of individuals or groups manipulating the price of tokens; (3) the storage of digital assets poses risks of lost or stolen cryptographic keys; and (4) the ability to transfer value through peer-to-peer networks creates unregulated money transmitters that could provide liquidity to those who want to launder money or participate in tax-avoidance schemes.

The NCUA is publishing this request for information with the aim of engaging the broad credit union industry and other stakeholders and learning how emerging DLT and DeFi applications are viewed and used. The NCUA hopes to learn how the credit union community is using these emerging technologies and gain additional feedback as to the role the NCUA can play in safeguarding the financial system and consumers in the context of these emerging technologies. The accelerating pace of change information technology brings, coupled with the widespread diffusion of computing power and the growing importance of networks, is raising new opportunities and challenges. In order to continue to fulfill its mandate to maintain a safe and sound credit union system and protect credit union members, the NCUA is working to better understand the implications of these changes and the associated benefits or challenges that may exist.

II. Request for Comment

The Board seeks comments on the current and potential impact of

[1] *https://www.ncua.gov/about-ncua/mission-values.*

[2] There are a number of terms used to describe DLT-based tokens, including virtual currencies, cryptocurrencies, crypto-assets, utility tokens, and digital assets. There are a variety of reasons these terms have evolved including the fact that these digital tokens fail to exhibit the qualities of a currency, and therefore, should not be confused by a term like cryptocurrencies. The term DeFi recognizes that because DLT has been used to develop a broader set of financial products beyond value transfer mechanisms, DeFi encompasses a broader range of different digital and financial products including settlement systems, security-like and equity-like financial instruments, non-fungible tokens, and discount tokens.

activities related to DLT and DeFi on the credit union system. The NCUA is broadly interested in receiving input on parties' views in this area, including current and potential uses. Commenters are also encouraged to discuss any and all relevant issues they believe the Board should consider with respect to these technologies and related matters. The Board reiterates that this request for information does not modify any existing requirements applicable to FICUs and does not grant FICUs any new authorities or limit any existing authorities. The request for information does not speak to the permissibility or impermissibility of any specific activity.

Questions Regarding Usage and the Marketplace

1. How are those in the credit union system currently using or planning to use DLT and DeFi applications?

2. What, if any, DLT or DeFi applications are those in the credit union system currently engaging in or considering? Please explain, including the nature and scope of the activity. More specifically:

a. What, if any, types of specific products or services related to these technologies are those in the credit union system currently offering or considering offering to members? Are credit union members asking for specific products or services related to these technologies?

b. To what extent are those in the credit union system engaging in or considering DeFi applications or providing services related to digital assets that have direct balance sheet impacts?

c. To what extent are those in the credit union system engaging in or considering DLT for other purposes, such as to facilitate internal operations?

d. To what extent, if any, are those in the credit union system aware of cross-jurisdiction or cross-border transactions related to DLT and digital assets.

3. In terms of the marketplace, where do those in the credit union system see the greatest demand for DeFi application services, and who are the largest drivers for such services?

4. Are there new developments that might affect use of DeFi applications by those in the credit union system in the future?

5. Are DeFi applications a competitive threat for those in the credit union system?

6. What concerns, if any, do those in the credit union system have related to current statutory or regulatory limitations on their ability to utilize DeFi applications? Are there any changes that would influence the credit union system's ability to utilize DeFi applications?

7. Apart from anything listed in this Request for Information, what other actions should the NCUA take? Please be as precise as possible, including, but not limited to, necessary regulatory changes, additional guidance, and legal opinions.

Operational Questions

8. What are the advantages and disadvantages of FICUs developing DLT and DeFi projects through third-party relationships versus through a credit union service organization (CUSO)?

9. How dependent will FICUs be on third-party software and open-source libraries for their own DLT projects?

Questions Regarding Risk and Compliance Management

10. To what extent are existing risk and compliance management frameworks designed to identify, measure, monitor, and control risks associated with various DLT and DeFi applications? Do some DLT and DeFi applications more easily align with existing risk and compliance management frameworks compared to others? Do, or would, some DLT and DeFi applications result in FICUs developing entirely new or materially different risk and compliance management frameworks?

11. What unique or specific risks are challenging to measure, monitor, and control for various DLT and DeFi applications? What unique controls or processes are or could be implemented to address such risks?

12. What unique benefits or risks to operations do FICUs consider as they analyze various DLT and DeFi applications?

13. How are FICUs integrating, or how would FICUs integrate, operations related to DLT and DeFi applications with legacy FICU systems?

14. Please identify any potential benefits, and any unique risks, of particular DLT and DeFi applications to FICUs and their members.

15. What impact will DLT and DeFi applications have on FICUs' earnings? How will FICUs ensure they account for any negative impact, such as potential lost interchange income as peer-to-peer transactions grow?

16. How are those in the credit union system integrating these new technologies into their existing Information Technology environment securely, including existing cybersecurity functions and data privacy/data protection policies? How are the risks in this area being evaluated?

17. What considerations have commenters given to how to maintain continued compliance with State and Federal laws and regulations that may be applicable to various DLT and DeFi applications, including, but not limited to, those governing securities, Bank Secrecy Act (BSA) and anti-money laundering, and consumer protection? Have those obligations, or uncertainty related to potential obligations, impacted commenters DLT and DeFi activities? How do commenters' DLT and DeFi activities address requirements in these areas?

18. How specifically do DLT and DeFi projects in the credit union system address BSA and Know Your Customer (KYC) requirements?

19. How can FICUs address fraud and other consumer protections with an immutable digital ledger? How can FICUs ensure continued compliance with any applicable consumer protection requirements that may arise with various DLT and DeFi applications, such as obligations related to fair lending, electronic funds transfers, and funds availability?

20. If utilizing, or planning to utilize, any of these or related technologies, what steps have been taken in providing the services and what has been done to ensure the services are being utilized safely and in compliance with all applicable laws and regulations? Please describe:

a. The process for developing a sound business case and presenting it to the board of directors for approval;

b. The process for ensuring the consideration of all of the risks and risk categories;

c. The level of due diligence performed on any vendors or third parties and whether the vendors were a new entry in the market or an established technology provider;

d. The process for assessing the quality and level of internal information systems and technology staff to support systems and applications; and

e. The process for developing internal oversight of the program.

Questions Regarding Supervision and Activities

21. Are there any unique aspects the NCUA should consider from a supervisory perspective?

22. Are there any areas in which the NCUA should clarify or expand existing supervisory guidance to address these activities?

23. The NCUA's Part 721 application procedures may be applicable to certain DLT activities.[3] Is additional clarity

[3] 12 CFR part 721.

needed? Would any changes to NCUA's regulations be helpful in addressing uncertainty surrounding the permissibility of particular types of DLT activity, in order to support FICUs considering or engaging in such activities?

Questions Regarding Share Insurance and Resolution

24. Are there any steps the NCUA should consider to ensure FICU members can distinguish between uninsured digital asset products and insured shares?

25. Are there distinctions or similarities between stablecoins (cryptocurrencies that are backed by a currency like the U.S. Dollar and are designed to have a stable value compared to other cryptocurrencies) and stored value products where the underlying funds are held at FICUs and, for which pass-through share insurance may be available to members in limited scenarios?

26. If the NCUA were to encounter any of the digital assets use cases in the resolution process or in a conservatorship capacity, what complexities might be encountered in valuing, marketing, transferring, operating, or resolving the DeFi activity? What actions should be considered to overcome the complexities?

Additional Considerations

Commenters are invited to address any other DLT and DeFi applications or related information they seek to bring to the NCUA's attention. Commenters are encouraged to provide the specific basis for their comments and, to the extent feasible, documentation to support any comments.

Authority: 12 U.S.C. 1756 and 1784.

By the National Credit Union Administration Board on July 22, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021–15948 Filed 7–26–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for ''Applications From Students for Agency Initiatives Poetry Out Loud or the Musical Theater Songwriting Challenge for High School Students''

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

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), 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. This program helps to ensure that requested data is 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 NEA is soliciting comments concerning the proposed information collection of: Applications from Students for Agency Initiatives Poetry Out Load or the Musical Theater Songwriting Challenge for High School Students.'' A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the electronic submission of responses.

ADDRESS: Email comments to Daniel Beattie, Director, Office of Guidelines and Panel Operations, National Endowment for the Arts, at: 202–682–5688 or *beattied@arts.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Beattie, Director of Guidelines and Panel Operations, National Endowment for the Arts, at: 202–682–5688 or *beattied@arts.gov.*

Dated: July 22, 2021.

Daniel Beattie,

Director, Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.

[FR Doc. 2021–15976 Filed 7–26–21; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on Awards & Facilities hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, August 3, 2021, from 10:45–11:45 a.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's Opening Remarks; approval of Prior Minutes; Action Item: Rubin Observatory Management Reserve; Action Item: Arecibo Observatory Clean-up Costs Award; Committee Chair's Closing Remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–16104 Filed 7–23–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on External Engagement hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business as follows:

TIME AND DATE: Tuesday, August 3, 2021, from 11:00–11:45 a.m. p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Opening

remarks and approval of minutes; highlights of Tennessee Roundtable; rollout of S&E Indicators Elementary and Secondary STEM education report; discuss S&E Indicators 2022 engagement plan; and discuss Strategic Engagement Tool.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Nadine Lymn, *nlymn@nsf.gov,* 703/292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at the National Science Board website at *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–16111 Filed 7–23–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 26, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–7420, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022–004

1. *Applicant:* Dr. Dale Andersen, SETI Institute, 189 Bernardo Ave. #200, Mountain View, CA 94043

Activity for Which Permit is Requested: Waste management. The applicant seeks a waste management permit to conduct multi-disciplinary research activities to expand both short- and long-term studies of ecological responses in Antarctic ecosystems. This permit covers accidental release of wastes generated through planned research and logistical operations. Wastes include solid and liquid waste, including designated pollutants and release to air. The applicant has provided a detailed mitigation plan for these categories of waste as well as a plan for removal of waste at the end of deployment. The applicant also plans to use small, battery-operated, remotely controlled aircraft systems to collect imagery to aid in the mapping of geomorphological structures and to collect information on local climate. Aircrafts will be flown at altitudes less than 100m by experienced pilots and will not fly over concentrations of wildlife, should any be in the area.

Location: Queen Maud Land, East Antarctica.

Dates of Permitted Activities: October 20, 2021–February 28, 2026.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–15968 Filed 7–26–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Hispanic-Serving Institutions Certification.

OMB Approval Number: 3145–0247.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Abstract: To enhance the quality of undergraduate STEM education at Hispanic-serving institutions (HSIs), the National Science Foundation (NSF) established the Improving Undergraduate STEM Education: Hispanic-Serving Institutions (HSI Program), in response to the Consolidated Appropriations Act, 2017 (Pub. L. 115–31) and the American Innovation and Competitiveness Act (Pub. L. 114–329). The lead institution submitting a proposal to the HSI Program must be an HSI as defined by

law in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a) (*https://www.govinfo.gov/content/pkg/PLAW-110publ315/html/PLAW-110publ315.htm*). Hence there is a need for institutions to self-certify via an HSI Certification Form.

The HSI Program includes a specific track that provides a funding opportunity for institutions that are new to NSF[5] or are Primarily Undergraduate Institutions (PUIs [6]), including community colleges. PUIs are ''accredited colleges and universities (including two-year community colleges) that award Associates degrees, Bachelor's degrees, and/or Master's degrees in NSF-supported fields, but have awarded 20 or fewer Ph.D./D.Sci. degrees in all NSF-supported fields during the combined previous two academic years.'' PUI definition obtained from *https://www.nsf.gov/funding/pgm_summ.jsp?pims_id=5518.*

Hence there is a need for institutions to provide a self-certification of PUI eligibility for this track. The following language is used:

Certification of PUI Eligibility. A Certification of PUI Eligibility, *following the format below and executed by an Authorized Organizational Representative,* must be included in PUI requests (Planning or Pilot Projects (PPP) only). A current, signed Certification, included on institutional letterhead, should be scanned and included as a PDF file.

Certification of PUI Eligibility

By submission of this proposal, the institution hereby certifies that the originating and managing institution is an accredited college or university that awards Associates degrees, Bachelor's degrees, and/or Master's degrees in NSF-supported fields, but has awarded 20 or fewer Ph.D./D.Sci. degrees in all NSF-supported fields during the combined previous two academic years.

Authorized Organizational Representative

Typed Name and Title

Signature

Date

Expected respondents: Hispanic-Serving Institutions.

Estimate of burden: We anticipate 175 proposals for 2 minutes which is approximately 6 hours.

Dated: July 21, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–15905 Filed 7–26–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 26, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–7420, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022–005

1. *Applicant:* Leidos Innovations Group, Antarctic Support Contract; 7400 S Tucson Way, Centennial, CO 80112

Activity for Which Permit is Requested: Harmful Interference, introduce non-indigenous species into Antarctica. The applicant is requesting a permit for two aspects of the Palmer Pier Replacement Project—the potential harmful interference to avian species and the introduction of non-indigenous species for use in a Marine Sanitation Device—to support the National Science Foundation (NSF) funded United States Antarctic Program (USAP) construction of a new pier. A permit is requested for potential harmful interference of avian species during the construction process. Noise generated by the demolition of the existing pier and construction of a new pier may cause disturbance to avian species in the vicinity of the project area. Mitigation measures will be put into place to minimize potential disturbance to wildlife in the area.

The applicant also requests a permit for the importation of commercially available, proprietary bacterial supplements for use in Marine Sanitation Devices aboard vessels deployed in support of the Palmer Pier Replacement Project. These supplements are used to improve wastewater treatment operation. Bacteria would not be released into the environment, and all effluent is to undergo complete disinfection prior to discharge.

Location: Palmer Station, Antarctic Peninsula.

Dates of Permitted Activities: October 1, 2021–January 31, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–15967 Filed 7–26–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on Strategy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, July 30, 2021, from 10:00–11:00 a.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's Opening Remarks; Discussion of NSF's 2022–2026 Strategic Plan.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science

Board website *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–16109 Filed 7–23–21; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

The U.S. Nuclear Waste Technical Review Board will hold a virtual public meeting on August 24, 2021.

Board meeting: August 24, 2021—*The U.S. Nuclear Waste Technical Review Board will hold an online virtual public meeting to review information on the Department of Energy's (DOE) technology development activities related to packaging, drying, and dry storage of DOE aluminum-clad spent nuclear fuel (SNF).*

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold an online virtual public meeting on Tuesday, August 24, 2021, to review information on the U.S. Department of Energy's (DOE) technology development activities related to packaging, drying, and dry storage of DOE aluminum-clad spent nuclear fuel (SNF).

The meeting will begin at 11:30 a.m. Eastern Daylight Time (EDT) and is scheduled to adjourn at 5:10 p.m. EDT. Speakers representing the DOE Office of Environmental Management and the national laboratories conducting the work for DOE will report on DOE's technology development program on aluminum-clad SNF packaging, drying, and dry storage. Speakers will describe DOE's program, including plans and goals, scope, and technical approach to better understand the characteristics and performance of aluminum-clad SNF that will be packaged and sealed into canisters designed for storage, transportation and disposal. Speakers will address the primary challenge to extended dry storage of aluminum-clad SNF, which is centered on the behavior of hydrated oxides and radiolytic breakdown of associated adsorbed and chemically-bound water. Laboratory speakers will address drying of aluminum-clad SNF surrogates, and radiolytic gas generation during storage in unsealed canisters and during extended dry storage (>50 years) in sealed canisters. The final speaker will describe efforts to develop remote sensors for measuring pressure, temperature, humidity, and hydrogen gas concentration inside a dry storage canister containing aluminum-clad SNF. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public, and opportunities for public comment will be provided. Details on how to submit public comments during the meeting will be provided on the Board's website along with the details for viewing the meeting. A limit may be set on the time allowed for the presentation of individual remarks. However, written comments of any length may be submitted to the Board staff by mail or electronic mail. All comments received in writing will be included in the meeting record, which will be posted on the Board's website after the meeting. An archived recording of the meeting will be available on the Board's website following the meeting. The transcript of the meeting will be available on the Board's website by October 24, 2021.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and high-level radioactive waste, and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Bret Leslie: *leslie@nwtrb.gov* or Dan Ogg: *ogg@nwtrb.gov.* For information on logistics, or to request copies of the meeting agenda or transcript, contact Davonya Barnes: *barnes@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: July 21, 2021.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2021–15887 Filed 7–26–21; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2021–62; MC2021–115 and CP2021–117]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 29, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2021–62; *Filing Title:* USPS Notice of Amendment to Priority Mail Express & Priority Mail Contract 122, Filed Under Seal; *Filing Acceptance Date:* July 21, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 29, 2021.

2. *Docket No(s).:* MC2021–115 and CP2021–117; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 200 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 21, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 29, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–15941 Filed 7–26–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–660, OMB Control No. 3235–0722]

Proposed Collection; 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 1–U

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 1–U (17 CFR 239.93) is used to file current event reports by Tier 2 issuers under Regulation A, an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form 1–U provides information to the public within four business days of fundamental changes in the nature of the issuer's business and other significant events. We estimate that approximately 144 issuers file Form 1–U annually. We estimate that Form 1–U takes approximately 5.0 hours to prepare. We estimate that 85% of the 5.0 hours per response is prepared by the company for a total annual burden of 612 hours (4.25 hours per response × 144 responses).

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 22, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15943 Filed 7–26–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before August 26, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from Curtis Rich, Agency Clearance Office, *Curtis.Rich@sba.gov* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

Copies: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The requested information is submitted by homeowners or renters when applying for federal financial assistance (loans) to help in their recovery from a declared disaster. SBA uses the information to determine the creditworthiness of these loan applicants, as well as their eligibility for financial assistance.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

OMB Control Number: 3245–0018.
Title: Disaster Home Loan Application.
Description of Respondents: Disaster Survivors.
Estimated Annual Responses: 34,273.
Estimated Annual Hour Burden: 42,841.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–15937 Filed 7–26–21; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2021–0022]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions, and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB): Office of Management and Budget, Attn: Desk Officer for SSA, Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2021–0022].

(SSA): Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*. Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0022].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 27, 2021. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Parent's Insurance Benefits—20 CFR 404.370, 404.371, 404.373, 404.374 & 404.601–404.603—0960–0012. Section 202(h) of the Social Security Act (Act) establishes the conditions of eligibility a claimant must meet to receive monthly benefits as a parent of a deceased worker who was contributing at least one-half of the parent's support at the time of the worker's death or when the worker became disabled. SSA uses information from Form SSA–7–F6, Application for Parent's Insurance Benefits, to determine if the claimant meets the eligibility and application criteria. The respondents are applicants filing for Parent's Insurance Benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–7–F6 (Paper)	4	1	15	1	* $27.07	0	*** $27
Interview (MCS)	325	1	15	81	* 27.07	** 21	*** 5,279
Totals	329	.....	.....	82	.....	.....	*** 5,306

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

2. Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040. When SSA needs information to determine a worker's employment status to maintain a worker's earning records, the agency uses Form SSA–7160, Employment Relationship Questionnaire, to determine the existence of an employer-employee relationship. We use the information to develop the employment relationship; specifically, to determine whether a beneficiary is self-employed or an employee. The respondents are individuals, households, businesses, and state or local governments seeking to establish their status as employees, and their alleged employers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–7160	45	1	25	19	* $22.14	** 24	*** $820

* We based this figure on the average U.S. worker's hourly wages of $27.07 (*https://www.bls.gov/oes/current/oes_nat.htm*); the median hourly wage of $21.10 for public sector Information and Records Clerks (*https://www.bls.gov/oes/current/oes434199.htm*); and the median hourly wage of $18.25 for State and Local government Information and Records Clerks (*https://www.bls.gov/oes/current/oes434199.htm*), as reported by Bureau of Labor Statistics data. We used the average of these three wages to calculate the combined Average Theoretical Hourly Wage of $22.14.

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

3. Statement of Self-Employment Income—20 CFR 404.101, 404.110, & 404.1096(a)(d)—0960–0046. To qualify for insured status, and collect Social Security benefits, self-employed individuals must demonstrate they earned the minimum amount of self-employment income (SEI) in a current year. SSA uses Form SSA–766, Statement of Self-Employment Income, to collect the information we need to determine if the individual earned at least the minimum amount of SEI needed for one or more quarters of coverage in the current year. Based on the information we obtain, we may credit additional quarters of coverage to give the individual insured status and expedite benefit payments. Respondents are self-employed individuals potentially eligible for Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
≤SSA–766	910	1	5	76	* $27.07	** $2,057

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

4. Substitution of Party Upon Death of Claimant—20 CFR 404.957(c)(4) & 416.1457(c)(4)—0960–0288. A judge may dismiss a request for a hearing on a pending claim of a deceased individual for Social Security benefits or Supplemental Security Income (SSI) payments. Individuals who believe the dismissal may adversely affect them may complete Form HA–539, Notice Regarding Substitution of Party Upon Death of Claimant, which allows them to request to become a substitute party for the deceased claimant. The judge and the hearing office support staff use the information from the HA–539 to: (1) Maintain a written record of request; (2) establish the relationship of the requester to the deceased claimant; (3) determine the substituted individual's wishes regarding an oral hearing or decision on the record; and (4) admit the data into the claimant's official record as an exhibit. The respondents are individuals requesting to be substitute parties for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
HA–539	4,000	1	5	333	* $10.95	** $3,646

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

5. Claimant Statement about Loan of Food or Shelter; Statement about Food or Shelter Provided to Another—20 CFR 416.1130–416.1148—0960–0529. SSA bases an SSI claimant's or recipient's eligibility on need, as measured by the amount of income an individual receives. Per our calculations, income includes other people providing in-kind support and maintenance in the form of food and shelter to SSI applicants or recipients. SSA uses Forms SSA–5062, Claimant Statement about Loan of Food or Shelter, and SSA–L5063, Statement about Food or Shelter Provided to Another, to obtain statements about food or shelter provided to SSI claimants or recipients. SSA uses this information to determine whether the food or shelter are bona fide loans or income for SSI purposes. This determination may affect claimants' or recipients' eligibility for SSI as well as the amounts of their SSI payments. The respondents are claimants and recipients for SSI payments, and individuals who provide loans of food or shelter to them.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–5062—Paper Version	29,026	1	10	4,838	* $19.01	** 24	*** $312,676
SSA–L5063—Paper Version	29,026	1	10	4,838	* 19.01	** 24	*** 312,676

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–5062—SSI Claims System	29,026	1	10	4,838	* 19.01	** 24	*** 312,676
SSA–L5063—SSI Claims System	29,026	1	10	4,838	* 19.01	** 24	*** 312,676
Totals	116,104			19,352			*** 1,250,704

* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

6. Application for Circuit Court Law—20 CFR 404.985 & 416.1485—0960–0581. Individuals claiming that an acquiescence ruling (AR) would change SSA's prior determination or decision must submit a written readjudication request with specific information. SSA reviews the information in the requests to determine if the issues stated in the AR pertain to the claimant's case, and if the claimant is entitled to readjudication. If readjudication is appropriate, SSA considers the issues the AR covers. Any new determination or decision is subject to administrative or judicial review as specified in the regulations, and the claimants must provide information to request readjudication. The respondents are claimants for Social Security benefits and SSI payments, who request a readjudication of their claim based on an AR notice.

Type of Request: Extension of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
AR-based Readjudication Requests	10,000	1	17	2,833	* $10.95	** $31,021

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

7. Social Security Administration Health IT Partner Program Assessment—Participating Facilities and Available Content Form—20 CFR 404.1614 & 416.1014—0960–0798. The Health Information Technology for Economic and Clinical Health (HITECH) Act promotes the adoption and meaningful use of health information technology (IT), particularly in the context of working with government agencies. Similarly, section 3004 of the Public Health Service Act requires health care providers or health insurance issuers with government contracts to implement, acquire, or upgrade their health IT systems and products to meet adopted standards and implementation specifications. To support expansion of SSA's health IT initiative as defined under HITECH, SSA developed Form SSA–680, the Health IT Partner Program Assessment—Participating Facilities and Available Content Form. The SSA–680 allows healthcare providers to provide the information SSA needs to determine their ability to exchange health information with the agency electronically. We evaluate potential partners (*i.e.,* healthcare providers and organizations) on: (1) The accessibility of health information they possess; and (2) the content value of their electronic health records' systems for our disability adjudication processes. SSA reviews the completeness of organizations' SSA–680 responses as one part of our careful analysis of their readiness to enter into a health IT partnership with us. The respondents are healthcare providers and organizations exchanging information with the agency.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–680	30	1	300	150	* $41.30	** $6,195

* We based this figures on average Healthcare Practitioners and Technical Occupations, as reported by Bureau of Labor Statistics data. (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

8. Authorization for the Social Security Administration to Obtain Personal Information—20 CFR 404.704, 404.820 404.823, 404.1926, 416.203, & 418.3001—0960–0801. SSA uses Form SSA–8510, Authorization for the Social Security Administration to Obtain Personal Information, to contact a public or private custodian of records on behalf of an applicant or recipient of an SSA program to request evidence information or proofs, which may support a benefit application or payment continuation. SSA also uses this form to obtain evidence or proofs to determine the claimant's payment amount. We ask for information such as the following:

- Age requirements (*e.g.,* birth certificate, court documents)
- Insured status (*e.g.,* earnings, employer verification)
- Marriage or divorce
- Pension offsets
- Wages verification
- Annuities
- Dividends, royalties, or other similar payments
- Property information
- Benefit verification from a State agency or third party
- Immigration status (rare instances)
- Income verification from public agencies or private individuals
- Unemployment benefits
- Insurance policies
- Alimony or Child Support payments.

If the custodian of the records requires a signed authorization from the individual(s) whose information SSA requests, SSA may provide the custodian with a copy of the SSA–8510. Once the respondent completes the SSA–8510, either using the paper form or using the Personal Information Authorization Intranet version, SSA uses the form as the authorization to obtain personal information regarding the respondent from third parties until the authorizing person (respondent) withdraws their claim or revokes the permission of its use. The collection is voluntary; however, failure to verify the individuals' eligibility can prevent SSA from making an accurate and timely decision for their benefits. The respondents are individuals who may file for, or currently receive, Social Security benefits, SSI payments, or Medicare Part D subsidies.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Paper SSA-8510 for general evidence purposes	8,226	1	5	686	* $19.01	** 24	*** $75,584
Personal Information Authorization Intranet Screens for general evidence purposes (SSI Claims System)	192,235	1	5	16,020	* 19.01	** 24	*** 1,766,295
Totals	200,461			16,706			*** 1,841,879

* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

Dated: July 21, 2021.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2021–15898 Filed 7–26–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11472]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Niki de Saint Phalle in the 1960s'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Niki de Saint Phalle in the 1960s'' at The Menil Collection, Houston, Texas, the Museum of Contemporary Art San Diego, La Jolla, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15959 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11480]

Notice of Determinations; Culturally Significant Objects Being Imported for Conservation and Display in ''Lives of the Gods: Divinity in Maya Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary conservation and display in the exhibition ''Lives of the Gods: Divinity in Maya Art'' at The Metropolitan Museum of Art, New York, New York; the Kimbell Art Museum, Fort Worth, Texas; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary conservation and exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15964 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11474]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Joan Mitchell'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Joan Mitchell'' at the San Francisco Museum of Modern Art, San Francisco, California, the Baltimore Museum of Art, Baltimore, Maryland, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15962 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11471]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Jasper Johns: Mind/Mirror'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Jasper Johns: Mind/Mirror'' at the Whitney Museum of American Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15961 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11468]

30-Day Notice of Proposed Information Collection: Law Enforcement Officers Safety Act (LEOSA) Photographic Identification Card Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to August 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Elizabeth Twerdahl, 1801 N Lynn Street, Arlington, VA 22209], who may be reached on 571–345–2187 or at *twerdahleh@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* LEOSA Photographic Identification Card Application.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Diplomatic Security, Domestic Operations Directorate (DS/DO).
- *Form Number:* No form.
- *Respondents:* Current and former Diplomatic Security Service special agents.
- *Estimated Number of Respondents:* 70.
- *Estimated Number of Responses:* 70.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 70 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This information is being collected in response to the Department's requirements under the Law Enforcement Officers Safety Act of 2004 (LEOSA), as amended and codified at 18 U.S.C. 926C, which exempts a ''qualified retired law enforcement officer'' carrying a LEOSA photographic identification card from most state and local laws prohibiting the carriage of concealed firearms, subject to certain restrictions and exceptions.

Methodology

Applicants will download the application form from the Department's public website, fill it out either electronically or by hand, and submit via email or mail.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2021–15917 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11478]

Determination Regarding Foreign Assistance to the Central Government of Nicaragua

Pursuant to section 7047(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, Pub. L. 116–260) and section 7047(c)(1) of the FY 2020 SFOAA (Div. G, Pub. L. 116–94), I hereby determine that the Government of Nicaragua has recognized the independence of, or has established diplomatic relations with, the Russian Federation occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated. June 16, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–15985 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 11476]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Rebel, Jester, Mystic, Poet: Contemporary Persians—The Mohammed Afkhami Collection'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Rebel, Jester, Mystic, Poet: Contemporary Persians—The Mohammed Afkhami Collection'' at the Asia Society, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15963 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11477]

Determination Regarding Foreign Assistance to the Central Government of Nauru

Pursuant to section 7047(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, Pub. L. 116–260) (FY 2021 SFOAA), section 7047(c)(1) of the FY 2019 SFOAA (Div. F, Pub. L. 116–6), and section 7047(c)(1) of the FY 2020 SFOAA (Div. G, Pub. L. 116–94), I hereby determine that the Government of Nauru has recognized the independence of, or has established diplomatic relations with, the Russian Federation occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated. June 16, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–15984 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 11479]

Determination Regarding Foreign Assistance to the Central Government of Syria

Pursuant to section 7047(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, Pub. L. 116–260) (FY 2021 SFOAA), section 7070(c)(1) of the FY 2018 SFOAA, section 7047(c)(1) of the FY 2019 SFOAA (Div. F, Pub. L. 116–6), and section 7047(c)(1) of the FY 2020 SFOAA (Div. G, Pub. L. 116–94), I hereby determine that the Government of the Syrian Arab Republic has recognized the independence of, or has established diplomatic relations with, the Russian Federation occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: June 16, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–15982 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 11473]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Great Hall Installation: Maya Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that one object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Great Hall Installation: Maya Art'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–15960 Filed 7–26–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance Colorado Springs Airport, Colorado Springs, Colorado

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a proposal from the City of Colorado Springs Airport Director of Aviation to change a portion of the airport from aeronautical use to non-aeronautical use at Colorado Springs Airport, Colorado Springs, Colorado. The proposal involves a parcel of airport property on the Northeast side of the airfield.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, *michael.b.matz@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Phillips, Director of Aviation, Colorado Springs Airport, 7770 Milton E. Proby Parkway, Suite 50, Colorado Springs, CO 80916, 719–550–1910; or Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, 26805 E 68th Ave., Suite 224, Denver, CO 80249, 303–342–1251, *michael.b.matz@faa.gov.* Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2), the FAA is considering a proposal from the Director of Aviation, Colorado Springs Airport, to change a portion of the Colorado Springs Airport from aeronautical use to non-aeronautical use. The proposal consists of 19.62 acres of vacant land located on the Northeast side of the airport, shown as Parcel 635 on the Airport Layout Plan.

The parcel does not have airfield access and will be developed for commercial use. The FAA concurs that the parcel is no longer needed for aeronautical purposes. The proposed use of this property is compatible with existing airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, as published in the **Federal Register** on February 16, 1999.

Issued in Denver, Colorado, on July 21, 2021.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2021–15938 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish changes in the Fixed Residential Moving Cost Schedule (schedule) for the States and Territories of Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Guam, Hawaii, Kentucky, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, N. Mariana Islands, Ohio, Oklahoma, Puerto Rico, South Dakota, Virgin Islands, Utah, Washington, West Virginia, and Wisconsin as provided for by section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The schedule amounts for the States and Territories

not listed above remain unchanged. The Uniform Act applies to all programs or projects undertaken by Federal Agencies or with Federal financial assistance that cause the displacement of any person.

DATES: The provisions of this notice are effective August 26, 2021, or on such earlier date as an agency elects to begin operating under this schedule.

FOR FURTHER INFORMATION CONTACT: Melissa L. Corder, Office of Real Estate Services, (202) 366–5853, email address: *melissa.corder@dot.gov;* David Sett, Office of the Chief Counsel, (404) 562–3676, email address: *david.Sett@dot.gov;* Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Background

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601–4655 (Uniform Act), established a program, which includes the payment of moving and related expenses, to assist persons who move because of Federal or federally assisted projects. The FHWA is the lead agency for implementing the provisions of the Uniform Act and has issued governmentwide implementing regulations at 49 CFR part 24.

The following 17 Federal departments and agencies have, by cross-reference, adopted the governmentwide regulations: U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Defense; U.S. Department of Education; U.S. Department of Energy; U.S. Environmental Protection Agency; U.S. General Services Administration; U.S. Department of Health and Human Services; U.S. Department of Homeland Security; U.S. Department of Housing and Urban Development; U.S. Department of Justice; U.S. Department of Labor; National Aeronautics and Space Administration; Tennessee Valley Authority; Federal Emergency Management Agency; U.S. Department of the Interior; and U.S. Department of Veterans Affairs.

42 U.S.C. 4622(b) provides that as an alternative to being paid for actual residential moving and related expenses, a displaced individual or family may elect payment for moving expenses on the basis of a moving expense schedule established by the head of the lead agency. The governmentwide regulations at 49 CFR 24.302 provide that FHWA will develop, approve, maintain, and update this schedule, as appropriate.

The purpose of this notice is to update the schedule published on July 24, 2015, at 80 FR 44182. The schedule is being updated to account for the increased costs associated with moving personal property. The updated amounts are based on review of the respective States' current moving cost market data and any proposed increases to the current schedule amounts as requested from all State highway agencies. This update increases the schedule amounts in the States and Territories of Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Guam, Hawaii, Kentucky, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, N. Mariana Islands, Ohio, Oklahoma, Puerto Rico, South Dakota, Virgin Islands, Utah, Washington, West Virginia, and Wisconsin. The schedule amounts for the States and Territories not listed above remain unchanged. The payment amounts listed in the table below apply on a State-by-State basis. Two exceptions apply to all States and Territories as referenced in 49 CFR 24.302. Payment is limited to $100.00 if either of the following conditions applies:

(a) A person has minimal possessions and occupies a dormitory style room, or

(b) A person's residential move is performed by an agency at no cost to the person.

The schedule continues to be based on the ''number of rooms of furniture'' owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses), an agency should increase the room count for the purpose of applying the schedule if the volume of possessions in a single room or space actually exceeds the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if the equivalent of two rooms worth of possessions is located in the basement. In addition, an agency may elect to pay for items stored outside the dwelling unit by adding the appropriate number of rooms.

Authority: 42 U.S.C. 4622(b) and 4633(b); 49 CFR 1.48 and 24.302.

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT—RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE—2021 PAYMENT SCHEDULE

State	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms	Addt'l room	1 room/ no furn.	Addt'l room no furn.
1. Alabama	600	800	1000	1200	1400	1600	1800	2000	250	400	100
2. Alaska	850	1100	1350	1625	1875	2075	2300	2500	350	600	250
3. American Samoa	282	395	508	621	706	790	875	960	85	226	28
4. Arizona	700	800	900	1000	1100	1200	1300	1400	100	395	60
5. Arkansas	650	900	1100	1350	1600	1825	2050	2275	225	450	125
6. California	780	1000	1250	1475	1790	2065	2380	2690	285	510	100
7. Colorado	675	895	1115	1270	1425	1580	1735	1890	155	385	55
8. Connecticut	715	930	1150	1350	1640	1920	2200	2500	175	260	70
9. Delaware	700	900	1100	1300	1500	1700	1900	2100	150	500	100
10. District of Columbia	800	1000	1200	1500	1700	1900	2100	2300	200	500	100
11. Florida	800	975	1150	1350	1575	1750	1950	2200	325	550	175
12. Georgia	600	975	1300	1600	1875	2125	2325	2525	200	375	100
13. Guam	850	1200	1550	1900	2200	2500	2750	3000	350	300	175
14. Hawaii	850	1200	1550	1900	2200	2500	2750	3000	350	300	175
15. Idaho	600	800	1000	1200	1400	1600	1800	2000	200	350	100

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT—RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE—2021 PAYMENT SCHEDULE—Continued

State	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms	Addt'l room	1 room/ no furn.	Addt'l room no furn.
16. Illinois	850	1000	1150	1250	1400	1600	1750	2050	450	650	150
17. Indiana	500	700	900	1100	1300	1500	1700	1900	200	400	100
18. Iowa	550	700	800	900	1000	1100	1225	1350	125	500	50
19. Kansas	400	600	800	1000	1200	1400	1600	1800	200	250	50
20. Kentucky	700	900	1100	1300	1500	1700	1900	2100	200	400	100
21. Louisiana	600	800	1000	1200	1300	1550	1700	1900	300	400	70
22. Maine	650	900	1150	1400	1650	1900	2150	2400	250	400	100
23. Maryland	700	900	1100	1300	1500	1700	1900	2100	200	500	100
24. Massachusetts	800	950	1100	1250	1400	1550	1700	1850	250	450	150
25. Michigan	750	1000	1200	1350	1500	1650	1800	1950	300	500	200
26. Minnesota	575	725	925	1125	1325	1525	1725	1925	275	450	150
27. Mississippi	750	850	1000	1200	1400	1550	1700	1850	300	400	100
28. Missouri	800	900	1000	1100	1200	1300	1400	1500	200	400	100
29. Montana	550	750	950	1150	1350	1550	1750	1950	200	350	100
30. Nebraska	400	600	800	1000	1200	1400	1600	1800	200	350	50
31. Nevada	700	900	1100	1300	1500	1700	1900	2100	200	450	150
32. New Hampshire	500	700	900	1100	1300	1500	1700	1900	200	200	150
33. New Jersey	650	750	850	1000	1150	1300	1400	1600	200	200	50
34. New Mexico	650	850	1050	1250	1500	1650	1850	2050	200	400	60
35. New York	675	900	1125	1350	1575	1800	2025	2250	225	400	125
36. North Carolina	550	750	1050	1200	1350	1600	1700	1900	150	350	50
37. North Dakota	550	750	950	1150	1350	1550	1750	1950	200	475	75
38. N. Mariana Is	350	550	700	850	1000	1100	1200	1300	100	300	70
39. Ohio	600	800	1000	1200	1400	1600	1800	2000	200	400	100
40. Oklahoma	750	950	1150	1350	1550	1750	1900	2050	200	350	100
41. Oregon	600	800	1000	1200	1400	1600	1800	2000	200	350	100
42. Pennsylvania	500	750	1000	1200	1400	1600	1800	2000	200	400	70
43. Puerto Rico	525	725	900	1225	1300	1350	1400	1450	150	300	50
44. Rhode Island	600	850	1000	1200	1400	1600	1800	2000	150	300	100
45. South Carolina	700	805	1095	1285	1575	1735	1890	2075	225	500	75
46. South Dakota	500	650	800	950	1100	1250	1400	1600	200	300	100
47. Tennessee	500	750	1000	1250	1500	1750	2000	2250	250	400	100
48. Texas	600	800	1000	1200	1400	1600	1750	1900	150	400	50
49. Utah	750	950	1150	1350	1550	1750	1950	2150	200	600	200
50. Vermont	400	550	650	850	1000	1100	1200	1300	150	300	75
51. Virgin Islands	500	700	900	1050	1200	1350	1500	1700	150	450	100
52. Virginia	700	900	1100	1300	1500	1700	1900	2100	300	400	75
53. Washington	800	1100	1400	1700	2000	2300	2600	2900	300	500	100
54. West Virginia	750	900	1050	1200	1400	1600	1800	2000	200	400	100
55. Wisconsin	600	825	1050	1275	1500	1725	1950	2175	250	465	115
56. Wyoming	540	800	870	1020	1170	1325	1500	1670	200	370	60

Exceptions: 1. The payment to a person with minimal possessions who is in occupancy of a dormitory style room or whose residential move is performed by an agency at no cost to the person is limited to $100.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing property for the move may be paid at the agency's discretion.

[FR Doc. 2021–15930 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers FRA–2010–0028, –0029, –0039, –0042, –0043, –0045, –0048, –0051, –0054, –0056, –0057, –0058, –0059, –0060, –0061, –0062, –0064, –0065, and –0070]

Railroads' Requests To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that nineteen host railroads recently submitted requests for amendments (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP). As these RFAs may involve requests for FRA's approval of proposed material modifications to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on railroads' RFAs to their PTCSPs.

DATES: FRA will consider comments received by August 16, 2021. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed RFAs to their PTCSPs are cited above and in the Supplementary Information section of this notice. For convenience, all active

PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Deputy Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that host railroads' recent RFAs to their PTCSPs are available in their respective public PTC dockets, and this notice provides an opportunity for public comment on these RFAs.

On July 16, 2021, the following 19 host railroads jointly submitted an RFA to their respective PTCSPs for their Interoperable Electronic Train Management Systems (I–ETMS): Alaska Railroad Corporation (ARR), The Belt Railway Company of Chicago (BRC), BNSF Railway (BNSF), Peninsula Corridor Joint Powers Board (PCMZ), Canadian National Railway (CN), Canadian Pacific Railway (CP), Consolidated Rail Corporation (CRSH), CSX Transportation, Inc. (CSX), Kansas City Terminal Railway (KCT), Kansas City Southern Railway (KCS), National Passenger Railroad Corporation (Amtrak), New Mexico Rail Runner Express (NMRX), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Northern Indiana Commuter Transportation District (NICD), Norfolk Southern Railway (NS), South Florida Regional Transportation Authority (SFRV), Southern California Regional Rail Authority (Metrolink), Terminal Railroad Association of St. Louis, and Union Pacific Railroad (UP). Their joint RFA is available in Docket Numbers FRA–2010–0028, –0029, –0039, –0042, –0043, –0045, –0048, –0051, –0054, –0056, –0057, –0058, –0059, –0060, –0061, –0062, –0064, –0065, and –0070.

Interested parties are invited to comment on any RFAs to railroads' PTCSPs by submitting written comments or data. During FRA's review of railroads' RFAs, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny railroads' RFAs to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2021–15973 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0056]

Petition for Approval Extension: Canadian Pacific Railway Company

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of petition for extension of approval of track inspection test program.

SUMMARY: This document provides the public notice that on July 7, 2021, Canadian Pacific Railway (CP) petitioned the Federal Railroad Administration (FRA) to extend an existing temporary suspension of some visual track inspections to allow for continuation of a previously-approved Test Program designed to test track inspection technologies (*i.e.,* an autonomous track geometry measurement system) and new operational approaches to track inspections (*i.e.,* combinations of autonomous inspection and traditional visual inspections).

FOR FURTHER INFORMATION CONTACT: Yu-Jiang Zhang, Staff Director, Track and Structures Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–6460 or email *yujiang.zhang@dot.gov;* Aaron Moore, Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–7009 or email *aaron.moore@dot.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2020, FRA conditionally approved the Test Program and CP's petition under 49 CFR 211.51 to suspend §§ 213.233(b)(3) and 213.233(c) as applied to operations under the Test Program. A copy of the Test Program, FRA's conditional approval of the Test Program, and a previously published **Federal Register** notice explaining FRA's rational for approving the Test Program and related suspension are available for review in the docket.[1]

As approved, the Test Program includes three separate phases over the course of 12 months as outlined in Exhibit C of the Program.[2] CP began the Test Program on August 7, 2020. Accordingly, the Test Program is currently set to expire on August 7, 2021.

CP is requesting to extend the Test Program until April 6, 2022 to complete the Program. CP cites the impact of COVID–19 as the primary reason for requesting the extension, noting that the railroad's efforts to safeguard the health of its employees and variety of restrictions associated with COVID–19 have ''impacted logistics, training, and change management activities associated with the Test Program.'' In support of its request, CP states that it will continue to comply with all other conditions and requirements of FRA's July 22, 2020, approval letter. CP further notes that for phase 3 of the Test

[1] *https://www.regulations.gov/document/FRA-2020-0056-0001* (Test Program); *https://www.regulations.gov/document/FRA-2020-0056-0002* (FRA's approval decision); *https://www.regulations.gov/document/FRA-2020-0056-0004* (FRA's published notice of approval).

[2] *See https://www.regulations.gov/document/FRA-2020-0056-0001.*

Program, it intends to take a more conservative approach than that provided for in FRA's approval letter by continuing manual visual inspections at the frequency specified in phase 2 of the Test Program.

A copy of the petition, as well as any written communications concerning the petition, if any, are available for review online at *www.regulations.gov*.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 26, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2021–15935 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0206]

Air Ambulance and Patient Billing Advisory Committee Notice of Public Meeting

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is giving notice that a virtual public meeting of the Air Ambulance and Patient Billing (AAPB) Advisory Committee will take place on August 11, 2021. The AAPB Advisory Committee will discuss the impact of the Airline Deregulation Act (ADA) on States' ability to regulate air ambulance operations and whether to recommend that the ADA be amended as a means of improving the regulation of air ambulance providers.

DATES: The AAPB Advisory Committee will hold a virtual meeting on August 11, 2021, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time. Requests to attend the meeting must be received by August 10, 2021. Requests for accommodations because of a disability must be received by August 3, 2021. If you wish to speak during the meeting, you must submit a written copy of your remarks to DOT by August 3, 2021. Requests to submit written materials to be reviewed during the meeting must be received no later than August 3, 2021.

ADDRESSES: The virtual meeting will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the AAPB Advisory Committee website at *https://www.transportation.gov/airconsumer/AAPB* at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual meeting, please contact the Department by email at *AAPB@dot.gov.* Attendance is open to the public subject to any technical and/or capacity limitations. For further information, contact Robert Gorman, Senior Attorney, at (202) 366–9342 or by email at *robert.gorman@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FAA Reauthorization Act of 2018 (2018 FAA Act) requires the DOT Secretary, in consultation with the Secretary of Health and Human Services (HHS), to establish an advisory committee to review options to improve the disclosure of charges and fees for air medical services, better inform consumers of insurance options for such services, and protect consumers from balance billing. On September 12, 2019, the Department announced the creation of the AAPB Advisory Committee.

The AAPB Advisory Committee held a public meeting on January 15–16, 2020. At that meeting, the AAPB Advisory Committee gathered information about the air ambulance industry, air ambulance costs and billing, and insurance and air ambulance payment systems. The AAPB Advisory Committee also discussed disclosure and separation of charges, cost shifting, and balance billing.

On February 4, 2020, the Department established three Subcommittees: (1) The Subcommittee on Disclosure and Distinction of Charges and Coverage for Air Ambulance Services; (2) the Subcommittee on Prevention of Balance Billing, and (3) the Subcommittee on State and DOT Consumer Protection Authorities. On January 11, 2021, the Subcommittees filed reports and draft recommendations for the full Committee's review.

The AAPB Advisory Committee held a second public meeting on May 27–28, 2021. The Committee discussed the draft recommendations of the Subcommittees and developed its own recommendations.[1] At the conclusion of the May 28 meeting, Committee members expressed an interest in discussing the ADA's impact on States' ability to regulate the activities of air ambulance services and in making recommendations related to the ADA, Public Law 95–504, as a means of improving the regulation of air ambulance providers. The Committee's Designated Federal Officer (DFO) indicated that a supplemental Committee meeting would be held to discuss and consider this matter, if the Department determined that the Committee had authority to do so after a careful review of the Committee's charter and the 2018 FAA Act. The Department has now determined that the Committee has the authority to discuss and make recommendations related to the ADA. While representatives of DOT and HHS are voting members of the AAPB Advisory Committee, those two representatives will abstain from voting on the merits of any recommendation that the Committee may develop regarding the ADA.

II. Summary of the Agenda

During the August 11, 2021 meeting, the AAPB Advisory Committee will deliberate the issue of whether and how to recommend that Congress amend the ADA. A more detailed agenda will be made available at least one week before the meeting at *https://www.transportation.gov/airconsumer/AAPB.*

[1] Presentations, Subcommittee reports, and other materials from the first two public meetings are available for public review on the AAPB Advisory Committee's docket, DOT–OST–2018–0206.

III. Public Participation

The meeting will be open to the public and attendance may be limited due to virtual meeting constraints. To register, please send an email to the Department as set forth in the **FOR FURTHER INFORMATION CONTACT** section. The Department is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language interpreter or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than August 3, 2021.

Members of the public may also present written comments at any time. The docket number referenced above (DOT–OST–2018–0206) has been established for committee documents, including any written comments that may be filed. At the discretion of the Chair, after completion of the planned agenda, individual members of the public may provide comments through the ''Q&A'' feature of the webinar platform or orally, time permitting. Any oral comments presented must be limited to the objectives of the committee and will be limited to five (5) minutes per person. Individual members of the public who wish to present oral comments must notify the Department of Transportation contact noted above via email that they wish to attend and present oral comments no later than August 3, 2021.

Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to AAPB Advisory Committee members by August 3, 2021. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

IV. Viewing Documents

You may view documents mentioned in this notice at *https://www.regulations.gov.* After entering the docket number (DOT–OST–2018–0206), click the tab labeled ''Browse & Comment on Documents'' and choose the document to review.

Issued in Washington, DC, this 21st day of July 2021.

John E. Putnam,

Acting General Counsel.

[FR Doc. 2021–15882 Filed 7–26–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Assistant Director for Regulatory Affairs, tel. 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 22, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individual

1. LOPEZ MIERA, Alvaro (Latin: LÓPEZ MIERA, Álvaro), Cuba; DOB 26 Dec 1943; POB Havana, Cuba; nationality Cuba; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse, relating to the leader's or official's tenure.

Entities

1. BRIGADA ESPECIAL NACIONAL DEL MINISTERIO DEL INTERIOR, Cuba; Target Type Government Entity [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the MINISTRY OF INTERIOR, a person whose property and interests in property are blocked pursuant to the Order.

Dated: July 22, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–15957 Filed 7–26–21; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 86 Tuesday,

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Part II

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Monitoring Requirements for Use of Dispersants and Other Chemicals; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OPA–2006–0090; FRL–4526.1–01–OLEM]

RIN 2050–AH16

National Oil and Hazardous Substances Pollution Contingency Plan; Monitoring Requirements for Use of Dispersants and Other Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending the requirements in Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that govern the use of dispersants, other chemicals and other spill mitigating substances when responding to oil discharges into waters of the United States. Specifically, this action establishes monitoring requirements for dispersant use in response to major oil discharges and/or certain dispersant use situations in the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976 (''navigable waters of the United States and adjoining shorelines''). These new monitoring requirements are anticipated to better target dispersant use, thus reducing the risks to the environment. Further, the amendments are intended to ensure that On-Scene Coordinators (OSCs) and Regional Response Teams (RRTs) have relevant information to support response decision-making regarding dispersant use.

DATES: This final rule is effective on January 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OPA–2006–0090. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800–424–9346 or TDD at 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 703–412–9810 or TDD 703–412–3323. For more detailed information on this final rule contact Gregory Wilson at 202–564–7989 (*wilson.gregory@epa.gov*). The contact address is: U.S. Environmental Protection Agency, Office of Emergency Management, Regulations Implementation Division, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002, Mail Code 5104A, or visit the Office of Emergency Management website at *http://www.epa.gov/oem/.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information

In April 2010, the Deepwater Horizon underwater oil well blowout discharged significant quantities of oil into the Gulf of Mexico. The blowout discharged oil from one mile below the sea surface. Approximately one million gallons of dispersants over a three-month period were deployed on surface slicks over thousands of square miles of the Gulf, and approximately three quarters of a million additional gallons of dispersants were, for the first time, injected directly into the oil gushing from the well riser. This raised questions about the challenges of making dispersant use decisions in response operations for certain atypical dispersant use situations. EPA is establishing new monitoring requirements under Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to address these challenges. Specifically in this action, the Agency establishes monitoring requirements for dispersant use in response to major discharges and/or certain dispersant use situations: Any subsurface use of dispersant in response to an oil discharge, surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period, and surface use of dispersant for more than 96 hours after initial application in response to an oil discharge. These new requirements are intended to address the challenges of atypical dispersant use situations, including those identified during Deepwater Horizon.

EPA estimates industry may incur a total incremental cost of approximately $32,000 to $3.0 million annually. Note that the annualized cost is the same for both the 3% and 7% discount rates because the cost is the same every year prior to being annualized. This action does not impose significant impacts on a substantial number of small entities. The Regulatory Impact Analysis, which can be found in the docket, provides more detail on the cost methodology and benefits of this action.

COST OF THE FINAL RULE

	Annualized cost, 20 years	
	Annualized at 3%	Annualized at 7%
Scenario 1—Low End	$32,124	$32,124
Scenario 4—High End	3,033,569	3,033,569

II. Entities Potentially Affected by This Proposed Rule

NAICS code	Industrial category
211120	Crude Petroleum Extraction.
211130	Natural Gas Extraction.
324110	Petroleum Refineries.
424710	Petroleum Bulk Stations and Terminals.
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).
483111	Deep Sea Freight Transportation.
483113	Coastal and Great Lakes Freight Transportation.
486110	Pipeline Transportation of Crude Oil.

The list of potentially affected entities in the above table includes oil exploration and production industries with the potential for an oil discharge into navigable waters of the United States and adjoining shorelines. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Under sections 311(d) and 311(j) of the Clean Water Act (CWA), as amended by section 4201 of the Oil Pollution Act of 1990 (OPA), Public Law 101–380, the President is directed to prepare and publish the NCP for removal of oil and hazardous substances. Specifically, section 311(d)(2)(G) directs the President to include a Schedule identifying ''(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and (iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters'' as part of the NCP. The Agency has promulgated both the NCP, see 40 CFR 300.1 *et seq.,* and the schedule of dispersants as required by section 311 (d)(2)(G), known as the NCP product schedule. See 40 CFR 300.900 *et. seq.* The President is further authorized to revise or otherwise amend the NCP from time to time, as the President deems advisable. 33 U.S.C. 1321(d)(3). The authority of the President to implement section 311(d)(2)(G) of the CWA is delegated to EPA in Executive Order 12777 (56 FR 54757, October 22, 1991). Subpart J of the NCP establishes the framework for the use of dispersants and any other chemical agents in response to oil discharges (40 CFR part 300 series 900).

IV. Background

In the United States and around the world, chemical agents are among the oil spill mitigation technologies available that responders may consider. Subpart J of the NCP sets forth the regulatory requirements for the use of chemical agents, including provisions for product testing and listing, and for authorization of use procedures. These requirements provide the structure for the On-Scene Coordinator (OSC) to determine in each case the waters and quantities in which dispersants or other chemical agents may be safely used in such waters. This determination is based on all relevant circumstances, testing and monitoring data and information, and is to be made in accordance with the authorization of use procedures, including the appropriate concurrences and consultations, found within the regulation. When taken together, the Subpart J regulatory requirements address the types of waters and the quantities of listed agents that may be authorized for use in response to oil discharges. EPA believes the wide variability in waters, weather conditions, organisms living in the waters, and types of oil that might be discharged requires this approach.

The Deepwater Horizon underwater oil well blowout in 2010 raised questions about the challenges of making chemical agent use decisions in response operations, particularly for certain atypical dispersant use situations. To address these challenges, in 2015 the Agency proposed amendments to Subpart J of the NCP that included revisions to the existing product listing, testing protocols, and authorization of use procedures, as well as new provisions for dispersant monitoring. The proposed new monitoring provisions under Subpart J were focused on dispersant use in response to major oil discharges and on certain dispersant use situations in the navigable waters of the United States and adjoining shorelines. The proposed new monitoring provisions were also aimed at ensuring that the response community is equipped with relevant data and information to authorize and use the products in a judicious and effective manner. Final action on the proposed revisions to the product listing, testing protocols, and authorization of use procedures will be taken separately from this action.

V. This Action

This final action addresses environmental monitoring of dispersant use in response to major discharges and to certain dispersant use situations. Specifically, in this action, the Agency establishes monitoring requirements for any subsurface use of dispersant in response to an oil discharge, surface use

of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24 hour period, and surface use of dispersant for more than 96 hours after initial application in response to an oil discharge. The discussion below explains the specific requirements and also summarizes and responds to public comments received on the proposal.

A. Monitoring the Use of Dispersants

The goal of establishing a Schedule under the NCP is to protect the environment from possible damage related to spill mitigating products used in response to oil discharges. The new monitoring requirements for certain discharge situations in this action supplements the existing regulatory provisions under Subpart J which already include test data and information requirements for chemical agents as well as procedures for authorizing the use of those agents to respond to oil discharges and threats of discharge.

The new § 300.913 establishes requirements for the responsible party to monitor any subsurface use of dispersant in response to an oil discharge, surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24 hour period, and surface use of dispersant for more than 96 hours after initial application in response to an oil discharge, and to submit a Dispersant Monitoring Quality Assurance Project Plan (DMQAPP) to the OSC. The requirements are established for the responsible party as they operate in those environments where applicable discharges may occur and should be in the best position to monitor the response. The Agency removed language included in the proposal that specified these actions were to be taken ''As directed by OSC . . .''. The clarification in this action is unnecessary as 33 U.S.C. 1321 and § 300.120 of the NCP already establish the OSC's oversight role over the responsible party. The Agency has also changed language associated with the DMQAPP to remove the proposed ''for approval'' qualifier in this final action. The change is to better reflect that the requirement to develop the DMQAPP is directed at the responsible party, and that the provision is not intended to establish a DMQAPP approval timeline for the OSC relative to dispersant use. Rather, the DMQAPP submission is intended to provide the OSC, and other agencies with NCP responsibilities, with a better understanding of the monitoring data to inform dispersant use decisions. The OSC may request that response support agencies provide feedback on the submitted DMQAPP and has the discretionary authority to require the responsible party to address any concerns associated with it. The responsible party is required to implement the new monitoring requirements when these dispersant use conditions are met, and for the duration of dispersant operations. The monitoring and data submissions that serve as the basis of this rule were established in the 2013 National Response Team (NRT) *Environmental Monitoring for Atypical Dispersant Operations* document. The Agency is aware that industry and OSROs have been preparing to monitor dispersant use this rule since the issuance of the NRT guidance document in 2013. The Agency encourages the continuation of planning and preparedness efforts and continues to support these efforts with our interagency partners.

Subpart J of the NCP is intended to provide tools that support planning for and responding to oil discharges. To this end, the monitoring requirements for certain discharge situations promulgated in this final rule serve as a complement to the existing regulatory approach under Subpart J. When dispersants are applied in response to an oil discharge, environmental field monitoring data can support decision-making in dispersant use operations by gathering site-specific information on the overall effectiveness, including the transport and environmental effects of the dispersants and the dispersed oil. Environmental field monitoring data is at the core of any response, as without it the extent of the problem cannot be evaluated nor can a path forward for an appropriate response be established.

The purpose of monitoring subsurface application is to characterize the dispersed oil, follow the plume integrity and transport with the underwater current, and identify and assess the potential adverse effects from the dispersed oil. Product testing conducted under standardized laboratory conditions is useful for comparison between different products. However, standardized laboratory conditions do not necessarily reflect field conditions. Monitoring of agents in the field informs the OSC and support agencies on the overall effectiveness of dispersant use, including the environmental effects and transport of dispersed oil. These new monitoring requirements, in conjunction with the existing testing and information requirements for chemical agents, and the procedures for authorizing the use of those agents, serve to protect the environment from possible damage related to spill mitigating products used.

1. General

Several Non-Governmental Organizations (NGO), private citizens, and local, state, and federal government agencies generally supported the proposed new monitoring requirements, with some also requesting some clarifications. A commenter stated that while they agree with the concept of requiring monitoring for dispersant use, the current language undermines the contingency planning process and illegally assigns responsibilities to the OSC and the responsible party. The commenter stated this usurps authority from all other agencies, tribes and the public, which they see as a breach of the responsibilities of the federal government to protect public trust resources.

The Agency agrees with commenters expressing support for this final action. The Agency disagrees with the comments that this action undermines the contingency planning process and illegally assigns responsibilities to the OSC and the responsible party. The EPA acknowledges the importance of effective contingency planning to the achievement of a timely and effective response. Planning and preparedness provisions are currently addressed under Subpart C of the NCP or as codified in regulations implementing CWA 311(j)(5) authorities as delegated to other NRT member agencies by E.O. 12777. The Agency is amending the proposed language in the opening paragraph of the monitoring section to clarify the new provisions are for the responsible party to implement. EPA disagrees with comments that state the structure of the new monitoring requirements usurps other governmental authorities or constitutes a breach of responsibilities of the federal government to protect public trust resources. The NCP designates the OSC as the person who is authorized to direct response efforts and to coordinate all other efforts at the scene of a discharge, including the new monitoring requirements. The NCP designates those Agencies providing the OSC for a response, including designating USCG to provide the OSC for oil spills into or threatening the coastal zone. See, *e.g.,* 40 CFR 300.120. The NCP requires that the OSC ensure that the natural resource trustees are promptly notified in the event of any discharge of oil to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the Area Contingency Plan (ACP) for the area in which the

discharge occurs. The NCP also directs the OSC and the trustees to coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions, including the OSC consulting with the affected trustees on the appropriate removal action to be taken. Finally, none of new requirements in this action in any way limit current existing NCP authorities, but rather they inform the OSC and facilitate compliance with regulatory responsibilities.

Several commenters supported the proposed amendments and suggested the monitoring requirements be extended to all products listed on the Product Schedule. Another commenter expressed similar concerns, stating that monitoring should occur anytime any product is used during a response activity. The commenter suggested these additional requirements for product effectiveness data would then be available for future releases, allowing for a refined set of response options. Another commenter stated that EPA should include language indicating that the new monitoring requirements are a minimum and that additional monitoring may be required based on conditions, dispersant type, and location. A commenter also recommended that, at a minimum, the requirements include monitoring of public health effects following the dispersant application.

The Agency interprets the specific requirements set forth in this final action as the minimum set of monitoring activities expected during a response involving the atypical dispersant use conditions specified. However, the Agency does not believe it is necessary to amend regulatory text for this purpose. The new requirements in no way impede the existing OSC authority [1] to direct the responsible party to conduct additional monitoring if deemed necessary due to incident-specific circumstances including location, oil type, or conditions of use. EPA notes that incident-specific circumstances may extend beyond the examples provided. The incident-specific data gathered through these new monitoring requirements, in conjunction with the OSC authority to direct additional monitoring, offers flexibility in accounting for differences in regional environments that may have the potential to impact any discharge situation. The USCG provides a designated OSC for oil discharges into or threatening the coastal zone as per 40 CFR 300.120. The OSC authorizes the use of chemical agents in accordance with Subpart J and other applicable provisions of the NCP.

The Agency reiterates that the new provisions are focused on environmental monitoring and are applicable only to the following atypical dispersant use situations: any subsurface use of dispersant in response to an oil discharge, surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period, and any surface use of dispersant for more than 96 hours after initial application in response to an oil discharge. However, these new requirements in no way preclude the OSC from directing the monitoring of any substance, including chemical agents used, or their use within different time frames than those listed above, as part of the existing authorities set forth in the NCP. The Agency is clarifying the applicability provisions of the monitoring requirements relative to the duration of their implementation. Specific to subsurface application of dispersants, the Agency is offering language further clarifying the monitoring provisions are to be implemented for the entire duration of the subsurface dispersant use. For dispersant application on the surface in response to oil discharges situations of greater than 100,000 U.S. gallons occurring within a 24-hour period, the monitoring provisions are to be implemented as soon as possible for the entire or remaining duration of surface dispersant use, as applicable. Finally, for any dispersant used on the surface for more than 96 hours after initial application, the new monitoring provisions in this action are to be implemented for the remaining duration of surface dispersant use, consistent with the 2013 National Response Team (NRT) *Environmental Monitoring for Atypical Dispersant Operations* document. Additional discussion regarding this clarifying language is found in Section C of this preamble—Water Column Sampling.

While the new provisions established in this action are specific to environmental monitoring, the Agency notes there are other impacts potentially resulting from an oil discharge and associated response operations that are addressed under different provisions of the NCP. Of note, the OSC initiates a preliminary assessment as per the NCP. This preliminary assessment is conducted using available information and is supplemented where necessary and possible by an on-scene inspection. 40 CFR 300.305(a)–(b). The preliminary assessment undertaken by the OSC in accordance with 40 CFR 300.305 includes an evaluation of the threat to public health or welfare of the United States or the environment.

A commenter suggested that for oil spill events where product preauthorization has not been granted, the rule should require that authorization of use be contingent on the Area Committee having a current Quality Assurance Project Plan (QAPP) approved by the RRT, NRT, and federally recognized Tribal representatives for the collection and reporting of all environmental data as part of the preauthorization plan. The commenter further suggested authorization be contingent on the Natural Resource Trustees having completed baseline ecosystem studies in the area impacted by the spill. Another commenter recommended that the development, approval, and update process for the QAPP be moved under the provisions for authorization of chemical agent use. They also suggested that withdrawal of concurrence, regarding product use following protocols also under authorization of use provisions, would mean that use of a product would cease until concurrence was reestablished.

A commenter proposed that the Natural Resource Trustees should select and manage peer-reviewed scientific studies that implement the approved QAPP for spills where the preauthorization conditions for product use are met. The commenter suggested the Natural Resource Trustees seek concurrence from the Department of Labor/OSHA and Department of Human Health and Services/CDC representatives to the RRT, federally recognized Tribal representatives, and the RRT representative from the state(s) with jurisdiction over waters and adjoining shorelines within the geographic area impacted for these scientific studies. Other commenters generally suggested that the proposed requirements ensure peer-review as part of the monitoring process.

The Agency recognizes that any monitoring to be conducted should follow a QAPP and has included new provisions to that effect. The Agency is modifying the provision by specifically requiring a DMQAPP to avoid confusion with the existing definition of a QAPP in the NCP. Further, given that the monitoring requirements are directed at the responsible party, the Agency believes it is most appropriate for the responsible party to develop a DMQAPP covering the environmental data collection, which includes quality assurance documentation. The DMQAPP developed by the responsible party is to be submitted to the OSC to

[1] See 33 U.S.C. 1321(c); See also 40 CFR 300.120, 40 CFR 300.305.

allow for a better understanding of the monitoring data. The Agency encourages the use of the guidance in *Section 4.0 Quality Assurance Project Plan* of the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* document for preparation of the DMQAPP. EPA also encourages the RP to develop a DMQAPP, to the maximum extent possible, as part of the RP's response planning to facilitate monitoring preparedness among other members of the response community. The OSC has the expertise of the Scientific Support Coordinator (SSC) and other pertinent response agencies available to provide feedback on the submitted DMQAPP, as well as the discretionary authority to require the responsible party to address any concerns raised. For oil discharges in the coastal zone it is National Oceanic and Atmospheric Administration (NOAA) that generally provides the SSC. The Agency disagrees that these new monitoring provisions cannot be implemented without having a DMQAPP specifically included in the applicable ACP. Likewise, implementation of the new monitoring requirements has no impact on baseline ecosystem studies conducted by the Natural Resource Trustees. The Agency notes that the roles and responsibilities of the Natural Resource Trustees are delineated under the current NCP, and that commenters' recommendations specific to a DMQAPP evaluation by the Natural Resource Trustees to select and manage peer-reviewed scientific studies are outside the scope of this action. Similarly, issues regarding authorization of chemical agent use are outside of the scope of this action.

A commenter supported the proposed monitoring requirements but suggested they include establishing baseline conditions prior to product application. Another commenter also suggested the requirements include pre-application monitoring of biological resources. A commenter suggested the concept of short-term damage assessments be included in this section, including rapid characterization of vulnerable aquatic species and habitats, and potential impacts to public health. Similarly, commenters also recommended longer-term monitoring and damage assessment activities as part of these new requirements; a commenter stated that monitoring should occur for the duration of the response and until the product is no longer detected in the water. Another commenter suggested that effects of dispersants on aquatic organisms may take longer to manifest themselves than the duration of monitoring that occurs during a spill response and therefore suggested that monitoring continue for several months following the dispersant application to allow for the assessment of both acute and chronic effects on fish and other species.

EPA agrees with commenters who requested that the new monitoring requirements also include site-specific baseline monitoring, prior to application of dispersant, and is amending the proposed rule text to reflect this change in the final rule. The Agency believes this a rational and necessary addition since an understanding of baseline conditions is required for understanding the effects of dispersants in a specific area. The Agency believes that baseline monitoring will provide pre- and post-dispersant application data to better evaluate the effects, including physical dispersion, of the dispersants. Further details on this change to the proposed requirements is found in the *Water Column Sampling* discussion in this preamble. This final action also recognizes the need for ecological characterization. The new monitoring provisions include requirements for the responsible party to characterize the ecological receptors (*e.g.,* aquatic species, wildlife, and/or other biological resources), their habitats, and exposure pathways that may be present in the discharge area. Specific comments on these new provisions are found in the *Ecological Characterization* discussion in this preamble. The Agency notes that the new monitoring provisions are for ecological monitoring of atypical dispersant use operations subject to this regulatory action (*i.e.,* any subsurface dispersant use, prolonged surface dispersant use, and surface dispersant use in response to major discharges). Other potential impacts from an oil discharge and from other associated response operations are addressed under different provisions of the NCP. The OSC initiates a preliminary assessment under the NCP. This preliminary assessment is conducted using available information and is supplemented where necessary and possible by an on-scene inspection. The preliminary assessment includes an evaluation of the threat to public health or welfare of the United States or the environment.

The Agency recognizes that some effects of dispersant use on the aquatic ecosystem may take longer to manifest than the duration of dispersant application or the monitoring time frames during a response. However, the new field monitoring provisions are designed to support and inform operational decisions by gathering site-specific information on the overall effectiveness, including the transport and environmental effects of the dispersant and the dispersed oil. Monitoring the overall effectiveness of dispersant use in the field provides the RRT member agencies with concurrence and consultation roles with information for operational decision making during atypical dispersant applications.

Adverse effects on ecological receptors from exposures to dispersant use depend on the length of time and concentration of the exposure, which are dependent on the transport of the dispersed oil. Given that each oil discharge represents a unique situation, the Agency believes comprehensive monitoring is important for those discharge situations which are addressed in this final action. This monitoring data will enhance the information available for an effective response without delaying the use of dispersants. The Agency believes that comprehensive monitoring in certain discharge situations is necessary to determine the overall effectiveness of dispersants and should extend beyond the initial dispersant application to include the transport and potential environmental effects of the dispersant and dispersed oil in the water column. While all the data collected for dispersant operations purposes may be made available to Natural Resource Damage Assessment (NRDA) personnel as soon as practicable, the new monitoring requirements are intended to inform operational decision-making specific to atypical dispersant use; use of collected data in the NRDA process is incidental to this rulemaking. The NRDA data gathering efforts apply more broadly than just to dispersant use as part of the response.

A commenter generally supported the concept of monitoring following dispersant use and recommended any monitoring data generated during a response acknowledge the uncertainty associated with the difficulty in estimating the effectiveness of dispersant actions in the field. A commenter recommended that EPA develop a set of standards for assessing dispersant application monitoring data in the field to supplement and validate results from laboratory-based studies.

The Agency agrees that because of the nature of the operations, a certain degree of uncertainty associated with monitoring data generated during a response is to be expected. The Agency believes that the requirement for the responsible party to develop and submit a DMQAPP will help address some of those uncertainties. The Agency expects that the DMQAPP will address sample

collection methodology, handling, chain of custody, and decontamination procedures to ensure the highest quality data possible will be collected and maintained. The Agency disagrees that it should develop a set of standards for assessing dispersant application monitoring data in the field to supplement and validate results from laboratory-based studies. Product testing conducted under standardized laboratory conditions is useful for comparison between different products. However, standardized laboratory conditions do not necessarily reflect field conditions. The monitoring requirements in this final action are intended to supplement and compliment SMART procedures, as applicable, and inform the OSC and support agencies on the overall effectiveness of dispersant use for decision-making in the response.

A commenter expressed concerns that the proposed requirements may not account for regional differences, which would be dealt with more effectively at the regional level, as opposed to the national level. This commenter also requested clarification on the distinction between dispersant efficacy and toxicity. The commenter suggested the reference to ''overall effectiveness'' is confusing and should be revised to clearly address both the effectiveness and toxicity of the dispersant and dispersed oil. The commenter also suggested that local field efficacy testing be conducted prior to dispersant use to understand site-specific conditions and that efficacy testing be conducted as outlined in the Special Monitoring of Applied Response Technologies (SMART) Tier I, Tier II, and Tier III protocols during the application monitoring. The commenter recommended that, if this type of monitoring is not possible, dispersant use be considered on a case-by-case basis as outlined under the regulatory provisions for authorization of chemical agent use.

The Agency again notes the OSC has authority to direct additional monitoring and data collection beyond that which is specified in the new requirements, including for dispersant use situations outside the scope of the new provisions. This may include local field efficacy testing prior to dispersant use to better understand and account for site-specific conditions in operational decision-making. While the SMART protocols may be utilized in pre-deployment field testing and as part of the overall response, the atypical uses of dispersant during a response that are addressed in this action were neither envisioned nor addressed in the existing SMART monitoring program. The requirements in this final action follow recommendations from the *Environmental Monitoring for Atypical Dispersant Operations: Including Guidance for Subsea Application and Prolonged Surface Application* developed by NRT member agency representatives in 2013 and focus on monitoring atypical use of dispersants during an oil discharge in order to provide data for operational response decision-making. Further details on the SMART protocols can be found in the *Field monitoring to support operational decisions* discussion in this preamble.

A commenter also requested clarification on the statement suggesting that subsurface dispersant application close to the release source reduces environmental impacts. They requested elaboration on the specifics of this statement in the context of the discussions of dispersant harm to aquatic organisms found in other places in the proposed rule. The commenter suggested elaborating on the language, or if there is inherent uncertainty, to allow RRTs to participate in research or testing associated with pre-authorization of dispersant use requests.

The proposed rule preamble at 80 FR 3394 states: ''Equipment is being contemplated to inject dispersants subsurface, directly into the oil near the source of the discharge. This type of application is intended to minimize dispersant dilution in the water before the dispersant has had an opportunity to interact with the oil. This application approach that is closer to the source is expected to reduce potential adverse environmental consequences from the use of excessive quantities of dispersants. However, applying dispersant to an oil discharge does not result in the physical recovery of oil from the environment. Instead, dispersing oil increases the potential exposure of aquatic organisms to the dispersant-oil mixture, at least transiently, and subsurface application has the potential to more immediately and effectively increase these exposures near the discharge.'' EPA disagrees with the commenter that clarification is needed on the cited statement, as the commenter had only cited a portion of the full statement. When taken in its full context, the statement is highlighting that this new subsurface dispersant application approach is intended to reduce the risk of using excessive quantities of dispersants. The full statement recognizes that dispersing oil does not remove it from the environment and that in some instances subsurface dispersant use has the potential to increase exposures near the discharge. The Agency recognizes the inherent uncertainties with a subsurface application approach, which is an integral part of the basis for the new monitoring requirements in this final action. For pre-authorization of dispersant use requests, the final action does not prevent the RRT from establishing additional criteria to address incident-specific concerns beyond those requirements in the final rule, or from establishing incident-specific criteria for those situations not covered in the final rule. RRT authorities and responsibilities are set forth in the NCP and are outside the scope of this action.

Some commenters further advocated making all monitoring results and information publicly available; some commenters suggested daily reporting and public notification protocols and that results of dispersant monitoring performed during the Deepwater Horizon oil spill response be released to provide an example of the types of information that can be obtained from existing methods and technologies.

The final action includes requirements for the responsible party to provide reporting to the OSC, including daily reporting of the monitoring data results. EPA expects that daily reporting would be reflective of an operational schedule based upon a 24-hour time period. Further details of those requirements are found in the *Immediate Reporting* and *Daily Reporting* discussions in this preamble. Regarding public notification protocols, EPA notes that the OSC directs response efforts and coordinates all other efforts at the scene of a discharge, including public information and community relations. See 40 CFR 300.120. The NCP provides instruction to the OSC on ensuring all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. See 40 CFR 300.155. The OSC public communications authorities under the NCP are outside the scope of this action. The Agency worked with Federal interagency partners in developing the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance, which includes examples of the types of information that can be obtained from relevant methods and technologies, and which serves as a basis for this action. Additionally, while the Agency did incorporate lessons learned from dispersant use operations during the Deepwater Horizon oil spill into this final action, the new monitoring requirements are performance based and focused on information requirements. The Agency

believes this approach provides the opportunity to consider relevant technologies and to capture advances in technologies.

A commenter expressed concerns over proposed language that seems to suggest that EPA views comprehensive and quantitative monitoring of dispersant effectiveness at sea as a feasible proposition. This commenter stated that currently, this type of monitoring is not technically possible and suggested that the word ''comprehensive'' be replaced with the word ''adaptive'' throughout this section. The commenter noted that this change would allow decisions related to dispersant use to be revisited as circumstances surrounding the release change.

The Agency disagrees that comprehensive and quantitative monitoring of dispersant effectiveness at sea is not currently technically possible. The requirements set forth in this action are informed by lessons learned during the Deepwater Horizon response and are consistent with the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance. Further, the Agency disagrees that the narrative describing the monitoring requirements should replace the term ''comprehensive'' with the term ''adaptive.'' The commenter stated that describing the monitoring requirements as ''adaptive'' would allow decisions related to dispersant use to be revisited as circumstances surrounding the release change. The Agency disagrees that characterizing the specific regulatory provisions in this action as comprehensive would in any way preclude the OSC to adapt operational decisions based on the monitoring data. The Agency is describing the new monitoring requirements as comprehensive because they go beyond the initial dispersant application to also include the transport and environmental effects of the dispersant and dispersed oil in the water column.

A commenter requested that EPA provide additional supporting references for the proposed requirements. The commenter suggested that supporting references could include peer-reviewed articles published since 2012 that examine the use of dispersants during the Deepwater Horizon response or the 48 studies initiated by government agencies cited in a 2012 U.S. Government Accountability Office (GAO) report. They also suggested that reference be made to the 2011 Federal On-Scene Coordinator (FOSC) Deepwater Horizon Operational Science Advisory Team (OSAT) Report, which indicated that there were no identifiable harmful impacts to any marine life following dispersant applications. The commenter requested that new monitoring requirements for the dispersant use situations applicable to this action be reconsidered in the context of recent scientific research. A commenter requested EPA review recent publications that suggest the effectiveness of dispersant use, citing results from monitoring and testing during the Deepwater Horizon oil spill response. Further, a commenter stated that the new monitoring requirements are unnecessary until EPA can provide published results indicating harm from dispersant use to the environment or public health. Similarly, a commenter stated that if there is no intention to include recent research in the proposed update, the new requirements should not be promulgated.

The Agency believes it has demonstrated the need for these new monitoring requirements to inform operational decision-making specific to atypical dispersant use. As already highlighted, the new requirements are consistent with the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance, which addresses the dispersant use situations addressed by this action. Further, the Agency disagrees that recent scientific research would necessitate reconsidering the minimum set of monitoring requirements for the atypical dispersant use situations as specified in this action. EPA recognizes uncertainties still surrounding dispersant use, particularly for the atypical dispersant use situations contemplated since their use during the Deepwater Horizon oil spill. EPA continues to participate in scientific efforts with scientists and researchers from industry, academia, and public organizations, such as the multi-year State-of-the-Science for Dispersant Use in Arctic Waters effort sponsored by NOAA though the Coastal Response Research Center, which continue to identify unknowns and uncertainties relative to this response technology. EPA also continues to actively participate as a standing member of the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR), a 15-member Interagency Committee established by Title VII of the Oil Pollution Act of 1990 (Section 7001). EPA's own research efforts and on-going engagement with the broader research community support the need for the new monitoring provisions established in this final action. Finally, the Agency notes the commenter's request to recognize the 2011 Deepwater Horizon OSAT Report. The commenter did not specify which 2011 OSAT report. The February 10, 2011, OSAT report is a summary for fate and effects of remnant oil in the beach environment. The July 8, 2011, report is an ecotoxicity addendum entitled ''*Summary Report for Sub-Sea and Sub-Surface Oil and Dispersant Detection: Ecotoxicity Addendum*.'' EPA's understanding is that the OSAT reports focused on information to guide response actions and do not draw conclusions about long-term environmental impacts of the spilled oil. Specifically, the OSAT ecotoxicity addendum report states that its purpose was to provide the OSC with information on the remaining toxicity of released oil and dispersant to representative water column and sediment-dwelling organisms at the time the samples were collected and intended to inform the OSC regarding transition of nearshore activities from the emergency response phase to the long-term recovery and restoration phase. The new monitoring requirements promulgated in this action will serve to inform dispersant use decisions during a response by providing environmentally relevant data and information to the OSC and other Agencies with roles and responsibilities under the NCP where atypical dispersants are deployed. Under the NCP, the OSC directs the response consistent with provisions including 40 CFR 300.120, 40 CFR 300.150, and Subpart D, which includes threats to the public health.

The Agency acknowledges that scientific research continues regarding dispersant use in general and with respect to the Deepwater Horizon oil spill. The Agency disagrees with the commenter that the monitoring requirements should be removed because EPA did not include references that the commenter characterized as the numerous scientific, peer-reviewed publications published since May 2012 in the 2015 preamble that the commenter stated to have examined the dispersant use during DWH. The commenter did not provide a list of references or examples as illustrations, nor included those that may be relevant to the monitoring provisions. The Agency believes that the new monitoring requirements will provide information and data to inform future response decisions for atypical dispersant use situations reflective of the Deepwater Horizon oil spill-type and other scenarios. Furthermore, these new monitoring requirements will provide information and data that address knowledge gaps identified in

the 2012 GAO report, ''*U.S. Government Accountability Office Report, Oil Dispersants, Additional Research Needed, Particularly on Subsurface and Arctic Applications,*'' which commenters also referenced.

The Clean Water Act provides that the National Contingency Plan ''shall include, but not be limited to, the following: . . . (F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances. (G) A schedule, prepared in cooperation with the States, identifying—(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the [NCP], (ii) the waters in which such dispersants, other chemicals, and other spill mitigating device and substances may be used, and (iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters . . . .'' In conjunction with the existing testing requirements, listing of agents, and authorization of use procedures, the promulgation of these new monitoring requirements provide data which can be used to inform the decision making of the OSC and of the other Agencies with roles and responsibilities under the NCP. The wide variability in waters, weather conditions, organisms living in the waters, and types of oil that might be discharged requires this combined approach.

A commenter expressed concerns that in the event of a spill these new monitoring requirements may hamper response activities from occurring in a timely manner. They recommended that effectiveness monitoring be conducted as a set of tabletop exercises first, to determine whether the monitoring protocols are feasible. This commenter also requested recognition for other analytical options such as in-situ analytical techniques.

The Agency disagrees with the premise that monitoring requirements could hamper response activities from occurring in a timely manner. The Agency notes the time frame for the deployment of subsurface dispersant injection equipment by vessels for offshore facilities is not expected to be different than the time frame for deploying monitoring equipment. Monitoring requirements should not delay or impede response actions related to the deployment of mechanical recovery, in-situ burning, or dispersant-related equipment. The monitoring and data submissions that serve as the basis of this rule were established in the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance document. The Agency is aware that industry and OSROs have been preparing for the requirements of this rule since the 2013 interagency signing of the NRT guidance document. This final action provides notice for a potential responsible party to identify and prepare for deployment of monitoring assets including identifying response personnel, equipment, and sampling materials. Potential responsible parties also have time to identify and plan for the need of alternative resources to account for events such as equipment failure, rather than wait until an incident occurs. The Agency encourages the continuation of planning and preparedness efforts and continues to support these efforts with our interagency partners.

A commenter indicated that monitoring of dispersants in the coastal zone should be under the authority of the United States Coast Guard (USCG). This commenter suggested that the RRT and OSC should have decision-making authority as indicated in NRT's *Environmental Monitoring for Atypical Dispersant Operations* and the SMART document. Another commenter stated that this section of the proposed rule should be consistent with, and pose no conflict to, the NRT guidance found in the 2013 *Environmental Monitoring for Atypical Dispersant Operations* document.

The Agency recognizes OSC roles, responsibilities and authorities as described in the NCP, including USCG OSC roles and responsibilities in the coastal zone as described in 40 CFR 300.120 and § 300.140. EPA has responsibilities under Subpart J of the NCP that apply to the use of chemical agents in the coastal and inland zones, including an authorization of use role as provided in 40 CFR 300.910 (states and other federal agencies also have responsibilities under this provision). The Agency acknowledges that the atypical dispersant use situations subject to the new monitoring requirements will likely be overseen by a USCG OSC. The President has delegated EPA the authority under CWA 311(d) to revise or otherwise amend the NCP and to establish requirements for dispersants, other chemicals, and other spill mitigating devices and substances, which are found in Subpart J of the NCP. The Agency has structured the amendments to Subpart J of the NCP to include not only the testing and listing protocols, and the authorization of use procedures, but also the monitoring provisions to ensure agents are being used appropriately. The new monitoring requirements are consistent with existing RRT and OSC authorities and responsibilities under the NCP. Finally, the requirements set forth in this action are informed by lessons learned during the Deepwater Horizon oil spill and are consistent with the 2013 *NRT Environmental Monitoring for Atypical Dispersant Operations* guidance.

The Agency acknowledges the recommendation to renumber the monitoring section but is not making this change because the numerical order of the provisions has no practical effect on the regulatory requirements.

2. Roles and Responsibilities for Monitoring Operations

Several commenters expressed concern specific to the requirements for the responsible party to monitor the use of dispersants under the direction of the OSC. A commenter stated that the responsible party should not oversee monitoring for impacts related to the spill for which they are responsible. Similarly, other commenters suggested the OSC select a qualified third party to be responsible for monitoring and water column testing processes during the response instead of the responsible party. Further, the commenters stated that the third party should be required to disclose any relationship with the responsible party to avoid potential conflicts of interest and suggested that the OSC oversee transparency in the monitoring and water quality testing processes. Commenters suggested that this third-party monitor should be acceptable to the OSC, EPA, Department of Interior (DOI) RRT representatives (potentially including DOC RRTs), as well as the responsible party. A commenter also suggested that because the QAPP will include DOI trust resources, it should be submitted and approved by DOI RRT representatives and the OSC. Commenters also suggest adding a timeline for submission and approval of the QAPP documentation.

EPA recognizes commenters' concerns regarding the responsible party conducting dispersant monitoring due to inherent conflicts of interest. The Agency notes that under the NCP the OSC coordinates, directs and reviews the work of the responsible party. See, *e.g.,* 40 CFR 300.120. The Agency believes the responsible party must be prepared for and provide resources to gather data and information to inform decisions regarding dispersant use operations. The approach to this final action is consistent with the NCP response framework, taking advantage of the knowledge and geographic proximity of the responsible party as applicable, and allowing for the effective allocation of limited

governmental resources. Additionally, the new monitoring requirements in this final action do not, for example, preclude the OSC from seeking a qualified third party to conduct additional monitoring or testing, from requiring the responsible party to use a third party to conduct the monitoring or testing where the OSC deems it appropriate, or from seeking supplemental data and information separately. Similarly, the final rule does not preclude the consideration of third-party testing or test results.

The Agency notes that the NCP already provides for the natural resource trustees' roles relative to dispersant use. Further, this final rule does not amend any regulatory requirements or authorities, including EPA-delegated authorities under Subpart J, or regarding the OSC role to direct public and private spill response efforts, the Area Committee responsibilities for developing Area Contingency Plans, or the responsible party's obligations for preparing Facility or Vessel Response Plans, as applicable. The NCP establishes the Regional Response Teams and their roles and responsibilities in the National Response System, including coordinating preparedness, planning, and response at the regional level. Nothing in this final action precludes OSC consideration of local interests and knowledge for effective allocation of resources, nor interferes with NCP established roles and responsibilities for response actions. The DMQAPP developed by the responsible party will be submitted to the OSC to provide context and allow for better understanding of monitoring data and information. The OSC has not only the expertise of the SSC available to assist with the data collected following the DMQAPP, it also has available within the existing NCP authorities the expertise of the respective state (as applicable), DOI RRT representatives and other pertinent agencies. The NCP designates the RRT as the appropriate regional mechanism for coordination of assistance and advice to the OSC during such response actions. As specified in the final regulatory text, the responsible party must submit a DMQAPP to the OSC covering the collection of environmental data within this section as part of implementing the monitoring requirements. The Agency again encourages planning and preparedness efforts and continues to support these efforts with our interagency partners.

A commenter suggested that although the proposed rule requires the responsible party to conduct monitoring, these operations would be completed under the direction of the OSC. The commenter indicated that the NCP provides for a three-tiered approach, including the Federal government directing all public and private spill response efforts for certain types of spill events; Area Committees developing detailed, location-specific Area Contingency Plans; and vessel and certain facility owners and operators preparing Facility Response Plans. The commenter suggested that this type of tiered approach allows for Federal oversight without dismissing local interests and knowledge and enables the efficient allocation of limited resources for response actions.

The Agency agrees that the USCG OSC generally oversees the responsible party during coastal zone response operations, which includes implementation of the new monitoring requirements. The new monitoring requirements fall within the existing NCP framework of federal government oversight through the OSC. The NCP serves as the federal government's blueprint for responding to oil discharges or threats of discharge, ensuring national response capabilities and promoting coordination among the hierarchy of responders and contingency plans. The approach to this final action is consistent with the NCP response framework, taking advantage of the knowledge and geographic proximity of the responsible party as applicable, and allowing for the effective allocation of limited governmental resources. These new provisions of minimal monitoring requirements under Subpart J for specific atypical dispersant use situations are consistent with the existing NCP authorities and objectives.

A commenter suggested that monitoring be required as directed by the OSC. The commenter suggested that every response is unique in terms of the type of spill and appropriate actions, and therefore, discretion should be given to the OSC to determine monitoring requirements. This commenter indicated that any monitoring requirements should be consistent with the phased approach to monitoring that is discussed in the SMART protocols. The commenter also pointed out that USCG Strike Teams have monitoring requirements and asked EPA for clarification related to the reasoning behind changing the existing monitoring process and oversight structure.

The Agency agrees discretion needs to be afforded to the OSC to account for incident- specific circumstances in a response. This action specifies that the new monitoring requirements are to be implemented by the responsible party. The Agency notes that under the NCP the OSC has an established oversight role over the responsible party; the OSC continues to have authority to direct additional monitoring and data collection beyond that which is specified in the new requirements. This may include local field efficacy testing prior to dispersant use to better understand and account for site specific conditions in operational decision-making. While the SMART protocols may be utilized not only in pre-deployment field testing but also as part of the overall response, the atypical uses of dispersant during a response that are addressed in this action were neither envisioned nor addressed in the existing SMART monitoring program. The requirements in this final action follow recommendations from the *Environmental Monitoring for Atypical Dispersant Operations* developed by NRT member agency representatives in 2013. The 2013 NRT guidance focuses on monitoring atypical use of dispersants during an oil discharge in order to provide data that will inform decision-making for dispersant use operations in a response. Further discussion on SMART protocols can be found in the *Field monitoring to support operational decisions* discussion in this preamble.

The Agency recognizes OSC roles, responsibilities, and authorities as described in the NCP, including USCG OSC roles and responsibilities in the coastal zone as described in 40 CFR 300.120 and 300.140, with additional clarification provided in previous **Federal Register** notices (*e.g.,* 59 FR 47389). EPA has responsibilities under Subpart J of the NCP that apply to the use of chemical agents in both the coastal and inland zones, including an authorization of use role as provided in 40 CFR 300.910 (states and other federal agencies also have responsibilities under this provision). The Agency acknowledges that the atypical dispersant use situations subject to the new monitoring requirements will likely be overseen by a USCG OSC. The President has delegated EPA the authority under CWA 311(d) to revise or otherwise amend the NCP and to establish requirements for dispersants and other chemicals, and other spill mitigating devices and substances, which are found in Subpart J of the NCP. The Agency has structured the amendments to Subpart J of the NCP to include the testing and listing protocols, the authorization of use procedures, and the monitoring provisions to ensure agents are being used appropriately. The

new monitoring requirements are consistent with existing RRT and OSC authorities and responsibilities under the NCP. Finally, EPA is unaware of any regulatory requirements issued by the USCG Strike Teams regarding dispersant use monitoring.

3. Field Monitoring To Support Operational Decisions

Several commenters expressed concerns that the proposal does not effectively justify the additional monitoring requirements. These commenters believe the additional monitoring requirements could cause delays in response actions, preclude dispersant use, and result in additional environmental damages. Some commenters expressed concerns that the proposed rule may hinder timely response operations, as opposed to improve real-time decision-making. They suggested the monitoring requirements should be designed by the OSC to fit the needs of the given environment.

The Agency disagrees with the premise that monitoring requirements could hamper response activities from occurring in a timely manner. The Agency notes the time frame for the deployment of subsurface dispersant injection equipment by vessels for offshore facilities is not expected to be different than the time frame for deploying monitoring equipment. The Agency reiterates the new monitoring provisions do not change current preparedness or planning regulatory requirements; the monitoring and data submissions that serve as the basis of this rule were established in the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* document. The Agency is also aware that industry and OSROs have been preparing for the requirements of this rule since the 2013 interagency signing of the referenced NRT guidance document. This final action provides notice for a potential responsible party to identify and prepare for deployment of monitoring assets including identifying response personnel, equipment, and sampling materials. Potential responsible parties also have time to identify and plan for the need of alternative resources to account for events such as equipment failure, rather than wait until an incident occurs. The Agency encourages the continuation of planning and preparedness efforts and continues to support these efforts with our interagency partners. Additionally, monitoring requirements should not delay or impede response actions related to the deployment of mechanical recovery, in-situ burning, or dispersant-related equipment.

Other commenters added that the proposed requirements deviate significantly from existing monitoring regimes from the NRT in its *Environmental Monitoring for Atypical Dispersant Operations,* which the commenters characterized as advocating for the adaptation of the SMART monitoring regimen. Some commenters requested that EPA adjust the language to require SMART Tier I efficacy monitoring for the first use of dispersants, followed by environmental impact monitoring no later than 96 hours after the first application.

Some commenters also suggested that the proposed rule goes beyond what is required by the NRDA. These commenters also stated that the new requirements appear to focus on the environmental effects of dispersant use rather than the health and safety of response workers. One commenter asked EPA to clarify that the primary objective of characterizing the efficacy of response agents is to protect response personnel health and safety. The commenters also suggested the OSC employ the Net Environmental Benefits Analysis (NEBA) structure to assess the overall benefits of dispersant use. Another commenter expressed concern about this type of monitoring informing response decision-making. Other commenters requested that EPA clarify between short-term monitoring result that must be disseminated extremely quickly and those that are part of a more comprehensive longer-term monitoring process.

The new monitoring section is modeled after the 2013 NRT guidance document, *Environmental Monitoring for Atypical Dispersant Operations,* developed following the Deepwater Horizon oil spill and tailored to monitoring atypical dispersant use situations. These NRT guidelines specified that atypical use of dispersants during a response are not addressed in the existing SMART monitoring program. In addition to the criteria outlined in the NRT guidelines, the Agency included applicability criteria for the new monitoring requirements for situations where the surface use of dispersants is authorized in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period. The Agency chose 100,000 U.S. gallons as a threshold criterion based on the NCP classification of major discharges to coastal waters. EPA combined this 100,000 U.S. gallons major discharge criterion with a 24-hour time frame, considering that a larger quantity of dispersant may be required in a short time frame for an incident of this scale. The applicability criteria in the final rule are consistent with the NRT *Environmental Monitoring for Atypical Dispersant Operations* guidelines.

As noted in the proposed rule, the goal of establishing a Schedule under the NCP is to protect the environment from potential damage related to spill mitigating products used in response to oil discharges. This goal is consistent with past preambles related to Subpart J. For example, the 1994 NCP final rule (59 FR 47407) noted, ''. . . EPA believes that Congress' primary intent in regulating products under the NCP Product Schedule is to protect the environment from possible deleterious effects caused by the application or use of these products. In looking at the long- and short-term effects on the environment of all spill mitigating devices and substances, EPA has concluded that chemical and bioremediation countermeasures pose the greatest threat for causing deleterious effects on the environment.'' While EPA recognizes that worker health and safety are integral to any oil spill response, provisions for these specific concerns are found under 40 CFR 300.150 of the NCP and are outside the scope of this action.

EPA disagrees with commenters that the new provisions should require SMART Tier I efficacy monitoring for the first use of dispersants, followed by environmental impact monitoring no later than 96 hours after the first application. While EPA recognizes the application of SMART Tier I protocols for evaluating initial dispersant efficacy, these protocols are based on aerial visual assessments by trained observers or advanced remote sensing instruments flying over the oil slick. To help evaluate visual assessments, NOAA developed a Dispersant Application Observer Job Aid, which is a field guide for trained observers to promote consistency in identification of dispersed and undispersed oil, describing oil characteristics, and reporting this information to decision-makers. The SMART protocols recognize that visual observations do not always provide confirmation that the oil is dispersed, and that dispersant operations effectiveness can be difficult to determine by visual observation alone.

The SMART protocols do not monitor the fate, effects, or impacts of dispersed oil. The monitoring of atypical dispersant use necessitates specific considerations beyond those addressed by SMART. The 2013 NRT *Environmental Monitoring for Atypical*

Dispersant Operations recognizes such atypical uses of dispersant during a response are not addressed in the existing SMART monitoring program. Further, the SMART protocols do not apply to any subsurface dispersant application. EPA is unaware of any similar NRT-approved protocols or NOAA-developed job aids related to subsurface dispersant application. The new monitoring requirements in this final action are intended to supplement, not to replace, the SMART protocols. The new requirements recognize that SMART monitoring protocols are expected to have already been deployed in atypical dispersant use situations. While some monitoring requirements are included in the SMART Tier III protocol (*e.g.,* turbidity, pH, Conductivity, Temperature), other requirements important to the understanding of dispersant effectiveness (*e.g.,* in situ droplet size distribution) are not.

A commenter noted that this action may be an opportunity to broaden the proposed requirements to cover all response approaches. Other commenters also suggested the RRT should have the ability to require field testing of a given approach prior to response action approval. A commenter expressed that this type of monitoring does inform response decision-making; the commenter requested that EPA clarify between short-term monitoring results that must be disseminated extremely quickly and those that are part of a more comprehensive longer-term monitoring process.

While this action specifically addresses certain atypical dispersant use operations, the Agency notes the OSC continues to have authority to direct additional monitoring and data collection beyond that which is set forth in the new monitoring requirements. Under the NCP, the OSC has the authority to direct monitoring and data collection for any and all approaches utilized during a response. This may include field efficacy testing prior to dispersant use to better understand and account for site-specific conditions in operational decision-making. RRT authorities and responsibilities are set forth in the NCP and are outside the scope of this action. However, for pre-authorization of dispersant use requests, the Agency notes that this final action does not prevent a RRT from establishing additional criteria to address incident-specific concerns beyond those requirements in the final rule, or from establishing incident-specific criteria for those situations not covered in the final rule.

Dispersants are not the only option for oil spill response, as other mitigation options are available that may lower the potential overall environmental damage. Decisions to use dispersants and other chemical agents used during a response are to be made in accordance with Subpart J of the NCP and all applicable statutes. Any environmental tradeoff methodologies for oil spill responses where dispersants and other chemical agents are considered must be in conformance with the statutory and regulatory authorities that govern their use.

4. Criteria for Triggering Monitoring Requirements

EPA received comments specific to the proposed thresholds or applicability criteria for triggering the monitoring requirements. A commenter indicated that although they agree with EPA's proposal to include thresholds above which monitoring requirements would apply, they suggested that the spill rate and volume be reduced. The commenter recommended that the trigger applicability volume threshold for monitoring be set to a discharge of more than 50,000 U.S. gallons within 24 hours and surface use of dispersants for more than 48 hours. Another recommended a lower release threshold of 21,000 gallons (500 barrels), and any dispersant use lasting more than 24 hours. In contrast, other commenters requested further clarification, and yet others a more relaxed set of thresholds for comprehensive monitoring. A commenter suggested that the proposed release volume of 100,000 gallons be relaxed, stating there are other factors to consider that influence spill outcomes beyond the spill volume. Commenters also expressed concern regarding the 96-hour duration threshold requirement for dispersant use and suggested that especially for earlier life stages near the surface, a 96-hour exposure has the potential for adverse effects. Citing the information above, a commenter proposed a 24-hour threshold for comprehensive monitoring instead of 96 hours. Finally, a commenter asked for clarification on the requirements for monitoring of dispersants use when the spill volume is less than 100,000 gallons in the first 24 hours or for dispersant use occurring over a period of less than 96 hours.

The Agency received support for establishing monitoring requirements, with commenters also offering opposing perspectives on the applicability thresholds that would trigger these requirements. The Agency agrees with the concept of monitoring the use of all chemical agents during a response; however, the monitoring requirements in this action apply specifically to certain atypical dispersant use situations. The Agency acknowledges some commenters' support for the new monitoring requirements applying to any subsurface dispersant use in a response. The Agency considered the alternative threshold and applicability criteria some commenters offered for atypical surface dispersant uses: 50,000 or 21,000 U.S. gallons within a 24-hour period and surface use of dispersants for more than 48 or 24 hours. Another commenter suggested that any enhanced monitoring beyond that required in the SMART protocols should commence within seven days. However, EPA disagrees with revising the proposed applicability thresholds for surface dispersant use, including those commenters who requested a more relaxed set of thresholds for the proposed discharge volume of 100,000 U.S. gallons.

While modeled after the 2013 NRT guidance, the Agency included the additional applicability criterion for the new monitoring requirements for situations where the surface use of dispersants is authorized in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period. The Agency chose 100,000 U.S. gallons as a threshold criterion based on the NCP classification of major discharges to coastal waters. EPA combined this 100,000 U.S. gallons major discharge criterion with a 24hour time frame, considering that a larger quantity of dispersant may be required in a short time frame for an incident of this scale. The Agency believes the potential variability in response actions for an incident of this magnitude, including consideration of the time needed for deployment, merits this scenario being included as a trigger for applicability of the new monitoring requirement.

The Agency recognizes that especially for earlier life stages near the surface, a longer exposure time frame has the potential for adverse effects. The 96-hour time frame in this action is based on 96 hours being a common exposure duration used in toxicological studies of dispersants. While recognizing that the 24- and 48-hour time frames may also be used in toxicological studies, the Agency's intent in proposing these specific monitoring requirements was to have them apply to atypical spill situations with the potential for larger amounts of dispersants being used. The Agency also disagrees with relaxing the time frame for the new requirements to begin monitoring within seven days, as the upper limit of that time frame would

be outside what the NRT has recognized as an atypical surface dispersant use situation. The Agency continues to believe that the applicability thresholds for both the quantities and durations for surface dispersant use as proposed serve to capture the potential for the broader ecosystem impacts resulting from the larger spills that are the focus of the new monitoring requirements. Finally, the applicability criteria in the final rule are consistent with NRT *Environmental Monitoring for Atypical Dispersant Operations* guidelines.

A commenter indicated that the phrase ''upon initiation and for the duration of subsurface dispersant use'' can be misconstrued to mean that monitoring should be conducted at all times. They suggested that monitoring requirements be determined by the OSC given the potential variability in response actions. This would allow the OSC to determine the best timing for operational monitoring deployment. This commenter also stated that the volume and duration criteria for monitoring should be replaced with a single criterion that ''any enhanced monitoring beyond SMART shall commence within seven days.'' According to the commenter, this ensures that the best experts can be mobilized to respond to the spill, monitoring vessels can be located and mobilized, sampling strategies can be developed, and appropriate safety considerations can be reviewed.

EPA proposed new monitoring requirements for the responsible party to implement when any subsurface and certain surface dispersant use conditions are met: ''When these dispersant use conditions are met, and for the duration of dispersant operations, the responsible party shall . . .''. EPA disagrees that the phrase can be misconstrued when taken within the context of the new monitoring requirements because it is qualified with the statement: ''When these dispersant use conditions are met . . .''. Further, the new minimum set of requirements for the specified atypical dispersant use conditions fall within the construct of the NCP and do not prevent the OSC to further consider the potential variability for any given response action. Additionally, the responsible party is required to submit a DMQAPP to the OSC, in which some of the incident-specific considerations to implementing monitoring operations can be addressed while still meeting the regulatory provisions. Thus, the Agency disagrees that the new provisions may not offer enough flexibility to allow for an appropriate level of monitoring.

As stated before, the final rule provides notification for a responsible party to identify and prepare for potential deployment of monitoring assets prior to the incident. Monitoring assets for a responsible party to identify and prepare for include response personnel, equipment, sampling materials, and alternative resources to account for equipment failure. The Agency also considered the steps taken for the deployment of subsurface dispersant injection equipment, including their associated time frames. The Agency does not believe deploying monitoring equipment should take longer than the deployment of subsurface dispersant injection equipment. Replacing the applicability criteria with a single criterion that ''any enhanced monitoring beyond SMART shall commence within seven days'' would result in subsurface dispersant application without any subsurface monitoring in place or surface monitoring beyond the intended applicability of SMART.

Some commenters were against having thresholds or applicability criteria for triggering the monitoring requirements and suggested that EPA should require comprehensive monitoring in all instances of dispersant or any other product use, regardless of the spill volume or duration, especially in Arctic waters. Some commenters asserted that this type of comprehensive monitoring would better capture acute effects on aquatic organisms. Other asserted comprehensive monitoring is important as it may represent the only opportunity to test the efficacy of these agents in a field or ''real world'' setting.

The Agency recognizes that there may be other factors to consider that influence spill outcomes beyond the spill volume. Further, surface dispersant use situations outside those specifically covered by the applicability criteria established in this final rule may also have adverse impacts. Thus, there is value in conducting operational monitoring for all instances of dispersant or any other chemical agent use, regardless of the spill volume, duration, or affected ecosystem. The new monitoring requirements in this action do not preclude an OSC from directing the responsible party to adopt similar procedures for dispersant use situations not covered by the established applicability criteria. This action does not impact the OSC authority to direct any monitoring necessary to evaluate dispersant efficacy and address potential toxicity concerns on aquatic organisms specific to the response, including in remote settings such as Arctic waters.

A commenter suggested the use of SMART Tier I monitoring protocols for all surface dispersant use and monitoring of long-term effects of dispersant use specific to a particular incident. Another suggested that efficacy monitoring should follow the SMART Tier I, Tier II, and Tier III protocols. Some commenters also suggested that monitoring information can be used to verify planning assumptions and also to support seafood safety decisions and NRDA activities. A commenter suggested the proposed rule may not offer enough flexibility to allow for an appropriate level of monitoring and requested that EPA revise the requirements to allow for OSC and RRT assessments of monitoring needs at each site instead of on a discharge volume basis.

The Agency disagrees with extending these new specific requirements to all instances of dispersant use. However, it agrees in part with commenters that dispersant use should be monitored and that monitoring of discharges not meeting the thresholds for these atypical monitoring requirements should, at a minimum, follow the NRT-approved SMART Tier I, Tier II, and Tier III protocols. EPA notes that RRTs typically include SMART monitoring as an essential element in their authorization of use review which is implemented during a response EPA disagrees with commenters who stated that all surface dispersant use should use the SMART Tier I protocol. While EPA recognizes the value of the SMART Tier I protocol in evaluating initial dispersant efficacy, it is based on aerial visual assessments by trained observers or advanced remote sensing instruments flying over the oil slick. To help evaluate visual assessments, NOAA developed a Dispersant Application Observer Job Aid, which is a field guide for trained observers to promote consistency in identification of dispersed and undispersed oil, describing oil characteristics, and reporting this information to decision-makers. The SMART Tier I protocol recognizes visual observations do not always provide confirmation that the oil is dispersed, and that dispersant operations effectiveness can be difficult to determine by visual observation alone. The SMART protocols do not monitor the fate, effects, or impacts of dispersed oil.

The monitoring of atypical dispersant use necessitates specific considerations beyond those addressed by the SMART protocols. The new monitoring section in this rule is modeled after the 2013 NRT guidance document *Environmental Monitoring for Atypical Dispersant*

Operations, developed following the Deepwater Horizon oil spill and specifically tailored to the type of atypical dispersant use situations covered by these new requirements. The 2013 NRT guidelines specify that atypical uses of dispersants during a response are not addressed in the existing SMART monitoring protocols. Again, the SMART protocols do not apply to subsurface dispersant applications. EPA is unaware of any similar NRT-approved protocols or NOAA-developed job aids related to subsurface dispersant application. The new monitoring requirements in this final action are intended to supplement, and not to replace, the SMART protocols. The new requirements take into account that the SMART monitoring activities are expected to have already been deployed in atypical dispersant use situations. While some monitoring requirements are included in the SMART Tier III protocol (*e.g.,* turbidity, pH, Conductivity, Temperature), other requirements (*e.g.,* in-situ droplet size distribution) that are important to the understanding of dispersant effectiveness are not.

With respect to a commenter who recommended monitoring of long-term effects of dispersant use specific to a particular incident, the Agency agrees that potential long-term effects of dispersant use should be considered during dispersant use decision-making. However, monitoring the long-term effects of dispersant use specific to a particular incident is part of the NRDA process. Again, these new monitoring requirements are intended to inform operational decision-making specific to atypical dispersant use and not intended to be part of the NRDA. The broader NRDA data gathering efforts may apply to dispersant operations or other parts of the response.

Some commenters stated that the efficacy of dispersants in Arctic waters is poorly understood and until additional scientific data is available, monitoring following any dispersant use should be required. A commenter suggested that in addition to the monitoring requirements, EPA should establish thresholds for the maximum dispersant application volumes over time, after which dispersants use should be ceased. Another suggested that all dispersant use should be curtailed until there is a more robust understanding of the toxic effects of these types of chemicals. Another commenter suggested that EPA should require site-specific testing and monitoring of products to determine efficacy prior to, during, and after response actions.

The Agency disagrees with the comments that the new monitoring requirements should include thresholds for maximum dispersant application volumes over time, after which dispersants use should be ceased. Establishing dispersant use volumes depends not only on incident-specific factors, but also on many site-specific factors (*e.g.,* local hydrodynamic conditions, species sensitivities), making this suggested approach overly restrictive. However, the Agency shares the commenters' concerns regarding the impact of atypical use of dispersants on the affected environments. The decision not to establish maximum dispersant application volumes over time, as part of these new monitoring requirements, should not be interpreted to mean that the Agency supports unlimited dispersant use. When responding under the NCP, decisions on dispersants and other chemical agents used are to be made in accordance with the authorization of use procedures in 40 CFR 300.910 of Subpart J. The provisions under Subpart J are driven by the statutory requirement to develop a schedule (see CWA 311(d)(2)(G)) that identifies the waters and quantities in which dispersants and other chemical agents may be safely used in such waters. The OSC is to make dispersant use determinations for each response based on all relevant circumstances and in accordance with existing authorization of use procedures under Subpart J of the NCP. The data and information resulting from the new monitoring requirements promulgated in this action will serve to inform dispersant use decisions during a response by the OSC and other Agencies with roles and responsibilities under the NCP where atypical dispersants are deployed. The new monitoring provisions, when taken together with the existing testing requirements, listing of agents, and authorization of use procedures under Subpart J address the types of waters and the quantities of listed agents that may be used safely in such waters in a response. The wide variability in waters, weather conditions, organisms living in the waters, and types of oil that might be discharged requires this approach. Any environmental tradeoff methodologies applied to dispersant use decisions must be in conformance with the statutory and regulatory authorities that govern the dispersant use.

The Agency continues to engage with the research community to incorporate advances in scientific understandings of dispersant use into existing policies. Curtailing all dispersant use until every aspect of dispersant efficacy and toxicity is studied would be impracticable and overly restrictive. However, EPA agrees an important aspect of dispersant use decision-making is documenting information and associated uncertainties of dispersant efficacy and toxicity specific to the conditions and geographical location where they are intended for use. The final monitoring requirements direct the responsible party to document the dispersant used and the rationale for dispersant choice(s), including the results of any efficacy and toxicity tests. Documentation of any additional efficacy and toxicity testing results, data or information specific to the area or site conditions, and associated uncertainties will assist the OSC and RRT(s) in choosing the appropriate dispersant use approach. The listing of a specific dispersant (*i.e.,* dispersant product) on the NCP Product Schedule is not a rationale to use a dispersant in any given situation. Further, the listing of a specific dispersant on the NCP Product Schedule does not mean that EPA approves, recommends, licenses, certifies, or authorizes its use on an oil discharge. The listing means only that the required data have been submitted to EPA as required by Subpart J of the National Contingency Plan, 40 CFR 300.915.

Finally, EPA agrees with commenters who requested the new monitoring requirements also include site-specific baseline monitoring prior to application of dispersant and is amending the final rule to reflect this change. The Agency believes this a rational and necessary addition since an understanding of baseline conditions is required for understanding the effects of dispersants in a specific area. The Agency believes that baseline monitoring will provide pre- and post- dispersant application data to better evaluate the effects, including physical dispersion, of the dispersants. Further discussion on this change to the proposed requirements is found in *Water Column Sampling* discussion in this preamble.

5. Surface vs. Subsurface Monitoring

A commenter suggested that EPA distinguish between surface and subsurface monitoring in the first paragraph of the proposed rule. They also suggested that the OSC should authorize dispersant use and evaluate the need for monitoring actions. The commenter suggested the proposed updates seem to inappropriately replace the three-tiered SMART protocols which this commenter indicated should be implemented for surface dispersant use using USCG resources. They also

requested that the rule specify that the responsible party monitor subsurface dispersant injections. They also asked that the monitoring requirement updates not impede response actions or dispersant use and should be implemented only after there are available resources during a response. Regarding subsurface monitoring, the commenter also proposed that EPA use the documentation in the published *Industry Recommended Subsea Dispersant Monitoring Plan—Version 1.0* as their basis for subsurface monitoring protocols. Similarly, a commenter requested a restructuring of the proposed rule to provide separate guidance for surface and subsurface dispersant use.

The Agency believes the monitoring section is clear relative to the requirements for the subsurface and surface monitoring and that dividing the monitoring section into separate subsections would be duplicative and unnecessary. However, the final rule does identify specific requirements relative to surface versus subsurface applicability. This preamble provides additional context to the intent of the regulatory requirements for surface and subsurface monitoring.

EPA notes that dispersant authorization of use is governed by a separate section of Subpart J (40 CFR 300.910) and is outside the scope of the new monitoring requirements for atypical dispersant use in this final action. The monitoring section of the final rule provides a minimum set of requirements the Agency believes are necessary for monitoring the use of dispersants in those situations covered by the applicability criteria.

The Agency disagrees that the proposed updates inappropriately replace the three-tiered SMART protocols, which the commenter indicated should be implemented for surface dispersant use using USCG resources. According to the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations,* atypical uses of dispersant during a response were not addressed in the existing SMART monitoring program. The SMART protocols do not apply to subsurface dispersant application, and the monitoring requirements for surface application are intended to supplement, not replace, the SMART protocols.

EPA disagrees that surface dispersant monitoring should be implemented using USCG resources to meet these regulatory requirements. The provisions of dispersant monitoring are appropriately the responsibility of the regulated community. USCG resources are intended to provide support in excess of commercially available resources. The SMART protocols do not limit surface dispersant monitoring to only USCG resources. The availability of government resources is not assured and does not satisfy the regulatory standard or intent of this rulemaking. Finally, while the OSC may choose to implement separate monitoring activities, the new monitoring requirements in this final rule are for the responsible party to implement and not directed towards any government agency or resources.

EPA does not believe the monitoring requirement will in any way impede response actions or dispersant use and disagrees that monitoring requirements should be implemented only after there are available resources during a response. The Agency also notes steps taken for the deployment of subsurface dispersant injection equipment, including their associated time frames. The Agency does not believe deploying monitoring equipment should occur on a time frame that is longer than the deployment of subsurface dispersant injection equipment. As observed elsewhere in this preamble, the new monitoring provisions do not change current preparedness or planning regulatory requirements; the monitoring and data submissions that serve as the basis of this rule were established in the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* document. The Agency believes that both industry and oil spill response organizations (OSROs) are aware of the NRT guidance document referenced immediately above and have since been preparing for monitoring requirements described in this rule. This final action provides notice to potential responsible parties of the expectation to identify and prepare for deployment of monitoring assets, to obtain data and information required during those discharge situations subject to this action, including response personnel, equipment, and sampling materials. This final action also allows potential responsible parties time to identify and have strategies in place to provide alternative resources for eventualities such as equipment failure, rather than wait until an incident occurs. The Agency encourages planning and preparedness efforts and supports these efforts with our interagency partners.

B. Information on Dispersant Application

In the new monitoring regulations, the responsible party is required to document: (1) The characteristics of the source oil; (2) the best estimate of the oil discharge volume or flow rate, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials; (3) the dispersant used, rationale for dispersant choice(s) including the results of any efficacy and toxicity tests specific to area or site conditions, recommended dispersant-to-oil ratio (DOR); and (4) the application method(s) and procedures, including a description of the equipment to be used, hourly application rates, capacities, and total amount of dispersant. For subsurface discharges, the responsible party must also document the best estimate of the discharge flow rate of any associated volatile petroleum hydrocarbons, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials. Methods and materials are commonly used terminology in the technical and scientific community, explaining the procedures and equipment used to obtain the results. The description should allow the reader to understand how the data was obtained and to reconstruct the methodology to get similar results.

As addressed in the preamble, the new monitoring requirements in this final action do not, for example, preclude the OSC from seeking a qualified third party to conduct additional monitoring or testing, from requiring the responsible party to use a third party to conduct the monitoring or testing where the OSC deems it appropriate, or from seeking supplemental information separately. Similarly, the final rule does not preclude the consideration of third-party testing or test results.

A commenter expressed concern regarding the reliance on potentially responsible parties for spill characterization including estimates of blowout flow rates and spill volumes as the basis for dispersant application volumes. A commenter suggested that the responsible party should be required to disclose all information used in determining estimates of flow rates and spill volumes. Another commenter recommended that any estimates of spill volumes or blowout rates should be independently derived and not under the purview of the potential responsible party. This commenter also indicated concern that the rule seems to only contain reference to blowout-type releases and argued that all potential types and sources of spills should be included in the updates to the rule. The commenter also stated that other parameters (*e.g.,* oil viscosity, emulsification, dispersant formulation, dose rate, mixing energy, water salinity,

and potential for dilution) should be included in the dispersant application decision-making process.

The Agency understands the concerns regarding the reliance on responsible parties for spill characterization, including estimates of blowout flow rates and spill volumes as the basis for dispersant application volumes. EPA is specifying ''volume'' since the monitoring requirements also apply to certain near instantaneous discharges where ''flow rate'' is not as applicable (*e.g.,* catastrophic tank vessel casualty). However, the new monitoring requirements do not preclude the OSC from seeking non-responsible party evaluations, including independent government agencies or academia, for spill characterization including estimates of discharge flow rates and volumes.

The new provisions require the responsible party to document the characteristics of the source oil and provide the best estimate of the oil discharge flow rate, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials. EPA agrees that the responsible party should disclose to the OSC all relevant information used in determining estimates of flow rates and spill volumes. This will provide the OSC with the necessary information for operational decision-making and coordination of the dispersant application monitoring.

The Agency agrees that other parameters (*e.g.,* oil viscosity) may inform the dispersant decision-making process, including dispersant application. For example, oil viscosity is an important parameter in characterizing the source oil and in conducting trajectory modeling as described in the *Oil Distribution Analyses* discussion in this preamble. The Agency believes these parameters are already inherently captured in the monitoring section, including the *Dispersant Application* and *Oil Distribution Analyses* discussions in this preamble, and therefore it is unnecessary to specifically list additional parameters.

A commenter stated that the responsible party should not be required to provide documentation at the onset of a response if the documentation was previously provided in the preparedness or planning stages. The commenter suggested removing this section from the proposed rule. They stated that if a dispersant or other agent is on the Schedule, then by definition it is a viable response option. This commenter also stated that if the section is not removed, it should be amended to say hourly application rates are to be provided for subsurface dispersant applications only. They indicated that an hourly application rate would not apply to aerial or vessel types of application which are measured on the basis or spray assets, application speed, and spray system swath widths. This commenter also recommended that the section discussing the DOR be edited to indicate that the ratio may need to be changed from the initial recommended ratio in response to site-specific environmental conditions or the weathering condition of the oil.

EPA disagrees that the responsible party should not be required to provide documentation at the onset of a response if the documentation was previously provided in the preparedness or planning stages and also disagrees with the suggestion that the section addressing such be removed from the proposed rule. The Agency also disagrees that listing of a dispersant or other agent on the Schedule defines it as a viable response option for any given response.

Requiring the responsible party to provide documentation ensures that information is directly provided to the OSC and is relevant to the incident-specific discharge situation and also avoids any potential delays in information gathering. The Agency calls attention to existing regulatory requirements clearly establishing that being listed on the NCP Product Schedule is not itself a rationale or authorization to use that dispersant in any given situation, but rather that the product is available for consideration as a response option, as appropriate. 40 CFR 300.920. The listing of a specific dispersant on the NCP Product Schedule does not mean that EPA approves, recommends, licenses, certifies, or authorizes the use of that dispersant on an oil discharge. The listing means only that data have been submitted to EPA as required by Subpart J of the National Contingency Plan, 40 CFR 300.915.

The Agency disagrees that the final rule should require hourly application rates be provided only for subsurface dispersant applications. Even if aerial or vessel types of application are measured based on spray assets, application speed, and spray system swath widths, the responsible party can calculate the volume of dispersant applied during the time in which it is applied. Certain American Society for Testing and Materials (ASTM) Standards (*e.g.,* ASTM F1737/F1737M–19 Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems; ASTM F1413/F1413M–18 Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems) may include procedures to assist in determining dispersant application rates. Furthermore, EPA clarified in the regulatory text that the daily reporting requirements for the actual amount of dispersant used is intended for each dispersant application platform.

EPA does not believe that the DOR should be qualified as ''initial'' to account for site-specific environmental conditions or the weathering condition of the oil. To the extent that the responsible party believes the DOR should be changed from the initial recommendation, they may request a change and should provide supporting documentation justifying the change for consideration by the OSC and RRT, as appropriate.

A commenter also suggested that EPA should remove the requirement for measuring volatile petroleum hydrocarbons. They indicated these types of measurements are very difficult to obtain and fluctuate due to shifts in wind speed and direction or changes in sun exposure. They also argued that EPA should use already existing best practices for dispersant monitoring such as the American Petroleum Institute (API) guidelines on subsurface dispersant monitoring, API TR 1152. The commenter proposed specific language for this change.

The Agency disagrees with the suggestion to remove the requirement for measuring volatile petroleum hydrocarbons. EPA recognizes the concern that these types of measurements may be difficult to obtain and may fluctuate due to shifts in wind speed and direction or changes in sun exposure for air sampling. However, these factors should not adversely affect measurements of these petroleum constituents in the water column as the result of a discharge where the subsurface application of dispersant may occur.

The Agency disagrees with replacing ''. . . collection of all environmental data.'' with ''. . . collection of operational monitoring data.'' However for clarity, the Agency has replaced ''. . . collection of all environmental data.'' with ''. . . collection of environmental data within this section.'' The monitoring requirements focus on collecting environmental data to support dispersant use decision-making in response operations, and not on overall operational monitoring to evaluate how well other response options (*e.g.,* in-situ burning) may

mitigate the negative effects of the oil discharge on sensitive environmental resources. The Agency recognizes an overall response strategy may incorporate operation monitoring to evaluate reducing the overall impact of an oil discharge and may include response options that are outside the scope of the dispersant monitoring section. However, the monitoring section in the final rule focuses on the environmental monitoring related to dispersant use. In addition, dispersants are not the only response option; there are other response options (*e.g.,* mechanical recovery) available that may lower overall environmental damage. Decisions on use of dispersants and other agents during a response are to be made in accordance with the NCP and the governing statute(s). Environmental tradeoff methodologies where dispersants are considered must be in conformance with the statutory and regulatory authorities that govern dispersant use when considering the extent to which they can be used.

As noted in the proposed rule, the goal of establishing a Schedule under the NCP is to protect the environment from possible damage related to spill mitigating products used in response to oil discharges. This goal is consistent with past preambles related to Subpart J. For example, the 1994 NCP final rule (59 FR 47407) noted, ''. . . EPA believes that Congress' primary intent in regulating products under the NCP Product Schedule is to protect the environment from possible deleterious effects caused by the application or use of these products. In looking at the long- and short-term effects on the environment of all spill mitigating devices and substances, EPA has concluded that chemical and bioremediation countermeasures pose the greatest threat for causing deleterious effects on the environment.''

A commenter indicated that they do not support the proposed provisions and expressed concerns regarding the role of the responsible party in dispersant operations and product selection. The commenter suggested that all dispersant-related activities and product selections be primarily advised by the NOAA SSC through the OSC and RRT with operational support from the responsible party. Similarly, a commenter requested that EPA clarify that the OSC, and not the responsible party, has final authority regarding the dispersant application practices. The commenter also suggested that new technologies such as open-cell elastomeric foams be used in conjunction with dispersants to mitigate environmental damage.

EPA recognizes the concern regarding the role of the responsible party in dispersant operations and product selection. However, the NCP establishes the OSC's authority to direct response efforts, including overseeing dispersant use and monitoring in accordance with Subpart J of the NCP. See, *e.g.,* 40 CFR 300.120. Also, SSCs may provide scientific support for operational decisions and coordinate on-scene scientific activity during a response, as described in the NCP under 40 CFR 300.145(c). The use of other response mitigation technologies is outside the scope of this final action.

C. Water Column Sampling

1. Background and Baseline Sampling

The final action requires the responsible party to collect a representative set of ambient background water column samples in areas not affected by the discharge of oil, at the closest safe distance from the discharge as determined by the OSC, and in the directions of likely oil transport considering surface and subsurface currents. The responsible party is also required to collect a representative set of baseline water column samples at such depths and locations affected by the discharge of oil absent dispersant application, considering surface and subsurface currents, oil properties, and discharge conditions. This collection of background and baseline water column samples is to follow standard operating and quality assurance procedures. These representative sets must be analyzed for the following variables: (1) In-situ oil droplet size distribution, including mass or volume mean diameter for droplet sizes ranging from 2.5 to 2,000 μm, with the majority of data collected between the 2.5 and 100 μm size; (2) in-situ fluorometry and fluorescence signatures targeted to the type of oil discharged and referenced against the source oil; (3) dissolved oxygen (DO) (subsurface only); (4) total petroleum hydrocarbons, individual resolvable constituents including volatile organic compounds (VOC), aliphatic hydrocarbons, monocyclic, polycyclic, and other aromatic hydrocarbons including alkylated homologs, and hopane and sterane biomarker compounds; (5) methane, if present (subsurface only); (6) heavy metals, including nickel and vanadium; (7) turbidity; (8) water temperature; (9) pH; and (10) conductivity.

A commenter expressed support for the proposed background sampling requirements. Another commenter expressed support for the proposed updates and suggested that the sampling also include background areas to better delineate the plume. That commenter stated that the sample collection and analysis should be paired with aerial and strobe imagery to more effectively assess the plume area. Another commenter also suggested the use of the ''Dispersed Oil Monitoring Plan'' developed by California Office of Spill Prevention and Response (OSPR), which provides an approach for water column sampling. Another commenter supported the proposed monitoring requirements but suggested they include establishing baseline conditions prior to product application. Another commenter suggested that EPA add an exception clause to the proposed rule which would require responsible parties to document why some or all sample collection requirements were not feasible during a given incident response.

The Agency agrees with the commenter's suggestion to include background water sampling and has included such requirements in the final rule. The Agency believes this a rational and necessary addition since an understanding of background conditions is required for understanding the incremental effects of dispersants. Ambient background sampling characterizes relevant ambient water conditions unaffected by the discharged oil, serves to check instrument performance, and informs dispersed oil plume behavior and delineating plume boundaries. The Agency recognizes imagery technology may assist in more effectively assessing the plume area when paired with water sampling. The final rule requires that the responsible party consider available technologies to characterize dispersant effectiveness and oil distribution, which may include imagery technology. The Agency believes the specific approach suggested for water column sampling as outlined in the ''Dispersed Oil Monitoring Plan'' developed by OSPR is consistent with the approach established in these monitoring provisions.

EPA agrees with commenters who requested the new monitoring requirements also include site-specific baseline monitoring of the oil discharge in the absence of dispersant application and is including such requirement in the final rule. The Agency believes that baseline monitoring will provide data absent dispersant application to evaluate physical dispersion relative to the effects of dispersant use. The baseline requirement is intended to consider the currents and oil characteristics, as well as other relevant discharge conditions such as the

discharge configuration or multiple discharge locations. The Agency also included similar clarifying language for the water column sampling in the dispersed oil plume provision. Conducting baseline monitoring absent dispersant application reduces potential uncertainties associated with dispersant effectiveness in the field and supports dispersant use decision-making in response operations. For subsurface dispersant application, this means initiating monitoring immediately prior to dispersant application to avoid disrupting dispersant application once it is initiated. The Agency does not believe that collection of baseline monitoring data immediately prior to subsurface dispersant application will delay response actions. Equipment for subsurface dispersant injection typically takes days to be deployed by vessels for offshore facilities and become operationally ready. Thus, there is an opportunity to also deploy monitoring equipment, prior to or concurrent with that of subsurface dispersant injection equipment, without delaying subsurface dispersant application. Of note, EPA is not requiring 24-hour analyses be conducted and results be provided before dispersant application may begin; only that samples be collected. The Agency notes again that the new monitoring provisions do not change current preparedness or planning regulatory requirements; the monitoring and data submissions that serve as the basis of this rule were established in the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* document. Further, the Agency believes that industry and OSROs have been preparing for the requirements of this rule since the 2013 issuance of the NRT guidance document, and notes API issued its own guidelines in 2013 on subsurface dispersant monitoring (API TR 1152). This final action provides notice for a potential responsible party to identify and prepare for deployment of monitoring assets including identifying response personnel, equipment, and sampling materials. Potential responsible parties also have time to identify and plan for the need of alternative resources to account for events such as equipment failure, rather than wait until an incident occurs. The Agency, along with our interagency partners, continues to support and encourage these planning and preparedness efforts.

The Agency recognizes that for certain atypical oil discharge situations where surface dispersants have been authorized, dispersant application may already be underway (*e.g.,* surface dispersant use prior to the 96-hour after initial application threshold) or capable of being applied by aircraft prior to dispersant monitoring vessels being deployed (*e.g.,* for surface dispersant application for oil discharges greater than 100,000 U.S. gallons within a 24-hour period). The final rule is not intended to impede surface dispersant application until vessels are deployed to begin baseline monitoring prior to the first dispersant application, nor to stop such operations once they have been authorized. However, EPA also understands that deployment of monitoring assets should begin before the 96-hour after initial application threshold is reached so as not to delay monitoring operations. Likewise, the initial application of authorized surface dispersant use by aircraft should not be delayed until surface monitoring assets are deployed. The Agency believes surface dispersant monitoring should be operational as soon as possible to allow for baseline monitoring because of its ability to inform the response efforts and is to be operational in accordance with the new monitoring requirements where the discharge meets the 96-hour after initial application threshold. To address concerns raised by commenters and avoid any misinterpretation that initial surface dispersant use by aircraft would be delayed, the Agency is clarifying the regulatory text, and specifically that for the monitoring requirements for any surface dispersant use in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period. The Agency is specifying that when any dispersant is used on the surface in response to oil discharges of greater than 100,000 U.S. gallons occurring within a 24-hour period, the responsible party shall implement paragraphs (a) through (g) of this section as soon as possible for the entire or remaining duration of surface dispersant use, as applicable. Finally, the Agency recognizes the differences in subsurface versus surface dispersant application relative to discharge location. Dispersant application in the subsurface generally occurs close to the oil discharge location, while surface dispersant application to oil patches may at times occur further away from the oil discharge location. Multiple oil patches provide multiple opportunities to monitor surface dispersant application activities, including baseline monitoring. EPA is not suggesting that every oil patch in which dispersant is applied must be monitored, but that the responsible party implement a sampling strategy where representative oil patches are monitored for baseline data and for the duration of dispersant operations.

EPA disagrees with the commenter who suggested the addition of an exception clause, which would require responsible parties to document why some or all sample collection requirements were not feasible during a given incident response. The commenter did not identify why some or all sample collection requirements would not be feasible. The Agency believes that such an exception would be overly broad. The responsible party is required to follow established standard operating and quality assurance procedures when collecting water column samples. Some commenters expressed general agreement with the need for monitoring but said that the proposed requirements add unnecessary analytical parameters and that such requirements may actually delay response actions. A commenter also stated that monitoring should be incident specific and be under the responsibility of the OSC and responsible party.

The Agency disagrees that the proposed requirements add unnecessary analytical parameters and that such requirements may actually delay response actions. Each oil discharge represents a unique situation with distinct conditions which may require various response methods. When dispersants are applied to an oil discharge, field monitoring can be used to inform operational decisions by gathering site-specific information on the overall effectiveness, including the transport and environmental effects of the dispersant and the dispersed oil. The Agency disagrees that the monitoring requirements for dispersant use are limited in scope to evaluating the initial effectiveness of the dispersant application. The Agency is requiring that sample collection follow established standard operating and quality assurance procedures that are reliable and defensible. Elements of monitoring plans are generally described in various guidance documents on standard operating and quality assurance procedures for environmental sampling.

The Agency disagrees with the premise that monitoring requirements could hamper response activities from occurring in a timely manner. Specifically, the monitoring requirements are not designed to delay or impede response actions related to the deployment of mechanical recovery, in-situ burning, or dispersant-related equipment. The Agency also notes the time frame for deployment of subsurface dispersant injection equipment by

vessels for offshore facilities is not expected to be different than the deployment of subsurface dispersant injection equipment. The final rule provides notification for a responsible party to identify and prepare for potential deployment of monitoring assets prior to an incident. These assets may include response personnel, equipment, and sampling materials, as well as alternative resources and procedures to account for events such as equipment failure. Comments regarding the OSC's roles and responsibilities are addressed in *Roles and Responsibilities for Monitoring Operations* discussion in this preamble.

A commenter stated that elements of 3–D and 4–D modelling should be included to broaden the overall understanding of subsurface conditions. The Agency acknowledges the modeling suggestion and addresses trajectory modeling in the *Oil Distribution Analyses* discussion in this preamble. The same commenter recommended updates to the proposed rule language droplet size distribution analysis; however, the Agency believes that the commenter intended for the droplet size to be in micrometers (μm) instead of picometers (pm) in its recommended rule language because for the purpose of measuring dispersed oil, droplet size is typically reported in micrometer units.

Some commenters indicated that water sampling requirements are more appropriate for the NRDA process. The Agency disagrees that the water sampling requirements in this final action are more appropriate for the NRDA process and believes that comprehensive monitoring for discharge situations subject to this action is necessary to determine the overall effectiveness of dispersants and should extend beyond the initial dispersant application to include the transport and environmental effects of the dispersant and dispersed oil in the water column. Furthermore, the Agency notes that the SMART Tier III protocol also includes water sampling.

Another commenter supported the proposed monitoring requirement and suggested that EPA require sampling and analysis of VOCs, semi-volatile compounds, and the full suite of metals and metalloids. This commenter also recommended the use of specific sampling devices. This final action requires water column samples in the dispersed oil plume to be analyzed for total petroleum hydrocarbons, which includes VOCs and semi-volatile compounds. Additionally, the commenter is not clear about which metals and metalloids to analyze for and which analytical methods to use. The Agency is requiring water samples be analyzed for heavy metals, including nickel and vanadium, which are typically found in crude petroleum oil. EPA does not specify sample collection methods or devices in the water column sampling requirements. The Agency is requiring that sample collection follow established standard operating and quality assurance procedures that are reliable and defensible; standard operating procedures should describe the appropriateness of the sampling method, including the equipment needed for sample collection.

A commenter indicated support specifically for daily water column sampling in the dispersed plume. This commenter also suggested that EPA develop protocols for surface and subsurface current tracking. EPA acknowledges a commenter's support specifically for daily water column sampling in the dispersed plume. EPA does not believe it is appropriate to develop protocols for surface and subsurface current tracking because the Agency believes these issues are best addressed in a DMQAPP. The final rule requires that the responsible party consider available technologies to characterize dispersant effectiveness and oil distribution.

A commenter expressed support for the proposed monitoring requirements but suggested that EPA provide minimum required monitoring guidance. Such guidance might include timing, sample frequency, number of samples, spatial locations, and sampling depths. This commenter also had questions regarding thresholds for each of the proposed monitoring parameters that would require a cessation of adjustment in response actions. For example, they questioned whether there is a threshold lower value for pH or DO in the water column, at which point responders would shift response actions until the parameter values were within the acceptable range. The commenter suggested that these thresholds should be established for each sampled parameter. Due to the potential for dispersants to enhance bioavailability to aquatic organisms, the commenter also requested that bioaccumulation of Total Petroleum Hydrocarbons (TPH) and heavy metals in benthic biota be added to the monitoring requirements along with characterization of these components in the sediment. They also indicated that Ultraviolet (UV) radiation monitoring could enhance plume characterization as these data are inexpensive to collect and are useful for understanding the oil weathering state.

The Agency acknowledges the commenter's suggestions regarding monitoring guidance for timing, sample frequency, number of samples, spatial locations, and sampling depths. The Agency believes that the final rule provides flexibility to develop monitoring strategies that can be tailored to an incident-specific dispersant use situation. Because these situations may vary, the Agency did not establish specific parameters for sample frequency, number of samples, spatial locations, and sampling depths other than what has been provided in the final rule. However, the monitoring approach should include periodic sampling of previously sampled locations including near the discharge source to evaluate changes in parameters over time at those locations.

Additionally, EPA did not propose to establish monitoring thresholds in the monitoring section and the establishment of thresholds is out of scope for these final monitoring provisions. EPA recognizes the commenter's concern regarding monitoring in benthic biota, sediment characterization, and UV radiation monitoring. The final action does not prevent the OSC or appropriate RRT agencies from requiring additional monitoring parameters, which may include benthic biota monitoring, sediment characterization, or UV radiation monitoring. The final rule requires that the responsible party consider available technologies to characterize the dispersant effectiveness and oil distribution to determine changes in the condition of the oil due to weathering.

A commenter suggested that incorporating API TR1152 (*Industry Recommended Subsea Dispersant Monitoring Plan,* Version 1.0, API Technical Report 1152, September 2013) by reference would meet the requirements of the subsection. The Agency disagrees that the monitoring requirements need to incorporate by reference API TR1152 or that adherence to it meets the requirements of the subsection. For example, API TR1152 presents a phased approach which allows subsurface dispersant injection to commence after implementing limited visual confirmation and air monitoring. The Agency disagrees that such an approach is appropriate for the atypical situations expected to trigger applicability of these requirements, particularly for subsurface dispersant application. While SMART protocols include visual observation for surface dispersant use, air monitoring is used for in-situ burning situations. In addition, the SMART protocols are not applicable to subsurface dispersant application. The expectation is that for

those atypical dispersant use situations, the expanded monitoring provisions put forth in this action are necessary to effectively inform dispersant use. As previously discussed in this preamble, the requirements set forth in this action are informed by lessons learned during the Deepwater Horizon oil spill and are consistent with the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance document.

2. Dispersed Oil Plume Daily Sampling

The new provisions require the responsible party to collect daily water column samples in the dispersed oil plume, following standard operating and quality assurance procedures, at such depths and locations where dispersed oil is likely to be present. This daily sampling must include the following variables: (1) In-situ oil droplet size distribution, including mass or volume mean diameter for droplet sizes ranging from 2.5 to 2,000 μm, with the majority of data collected between the 2.5 and 100 μm size; (2) in-situ fluorometry and fluorescence signatures targeted to the type of oil discharged and referenced against the source oil; (3) dissolved oxygen (DO) (subsurface only); (4) total petroleum hydrocarbons, individual resolvable constituents including volatile organic compounds, aliphatic hydrocarbons, monocyclic, polycyclic, and other aromatic hydrocarbons including alkylated homologs, and hopane and sterane biomarker compounds; (5) methane, if present (subsurface only); (6) heavy metals, including nickel and vanadium; (7) turbidity; (8) water temperature; (9) pH; and (10) conductivity. Several commenters indicated support for the water column sampling section of this final rule and agreed that these provisions will add value during a response.

3. Water Column Samples Analyses

The responsible party must collect ambient background, baseline, and dispersed oil plume water column samples following standard operating and quality assurance procedures. The water column samples are to be analyzed, as applicable, for: Droplet size distribution; fluorometry and fluorescence; dissolved oxygen; total petroleum hydrocarbons; methane; heavy metals; turbidity; water temperature; pH; and conductivity. The Agency is not including the proposed requirement to analyze for carbon dioxide in this final action. The specific provisions are as follows:

i. In-Situ Oil Droplet Size Distribution Analysis, Including the Mass or Volume Mean Diameters Between Droplet Sizes Ranging From 2.5 to 2000 μm, With the Majority of Data Collected Between the 2.5 and 100 μm Sizes

A commenter requested additional descriptions of the methodology for determining droplet size. They expressed concern that while techniques such as Laser In-situ Scattering and Transmissometry (LISST) can measure droplet size, there needs to be a process for confirming that the particles are dispersed oil versus other types of suspended particles. They suggested the concurrent use of fluorometers to help differentiate oil droplets from other particles. Another commenter similarly suggested that EPA clarify that droplet measurement methods should include fluorometers or similar instrumentation. This commenter also stated that the use of fluorometry could aid in confirming the measurement of actual oil droplets as opposed to other particles in the water column.

A commenter discussed concerns related to the feasibility of in-situ droplet size measurements. They indicated that LISST has a droplet size detection limit of around 500 μm, well below the upper limit of the proposed range of 2.5–2000 μm. They also stated that there is currently no commercially available droplet measurement instrumentation that is operational in deep water to size ranges up to 2000 μm. They indicated that if this instrumentation did become available in the future, it would likely require remotely operated vehicles (ROV) or additional vessel support, which would be impossible to deploy without interfering with response activities. This commenter recommended that EPA allow for alternative methods for measuring droplet size including high definition, high speed photography, or sonar as these technologies mature.

A commenter indicated strong support for the proposed updates to this section of the proposed rule, stating that droplet size measurement is critical for response actions. Similarly, a commenter stated that they agreed with EPA that the collection of droplet size distributions will add valuable information during response actions.

The Agency is not requiring the use of specific oil size droplet measurement methods or instrumentation. Further, the Agency is not requiring the use of single instrument, methodology, vessel, or ROV be used to collect the required information. How to collect the information is left for the responsible party to determine and document in the DMQAPP. The Agency is requiring that droplet size information be collected because oil droplet sizes generally decrease with dispersant addition and because oil droplets below 100 μm generally remain entrained into the water column, relative to larger particles that may eventually resurface over time. Furthermore, collecting oil droplet sizes of a broader range informs trajectory modeling used to predict the fate and transport of dispersed oil and to inform sampling locations. This final rule requires that sample collection follow established standard operating and quality assurance procedures that are reliable and defensible; standard operating procedures should include the equipment needed for sample collection. The Agency agrees with the concurrent use of fluorometers to help differentiate oil droplets from other particles. The final rule includes fluorometry as part of the water sampling requirements. The Agency does not designate specific methods or devices in this final rule, including methods for measuring droplet size such as high definition, high speed photography, or sonar.

ii. In-Situ Fluorometry and Fluorescence Signatures Targeted to the Type of Oil Discharged and Referenced Against the Source Oil

A commenter indicated that the proposed fluorometry measurements are redundant and less informative than the droplet size measurements. They suggested that collection of these measurements be optional and handled on a case-by-case basis. This commenter also requested that EPA substantiate the need to replace the existing SMART protocols, which provide similar monitoring approaches including the use of simple fluorometry in the SMART Tier II protocol.

Another commenter suggested additional resources for planning and conducting sample collection and monitoring in the field. They indicated that the use of SMART Tier III fluorometry tows could facilitate the collection of before and after treatment samples from outside and inside the slick area.

Other commenters expressed support for the proposed fluorometry measurements, but requested clarification related to the use of in-situ fluorometry in the response context. These commenters suggested that EPA clarify that oil weathering and dispersion can impact the fluorescence of oil components. These commenters also indicated that site-specific calibration may be necessary in

response to changing turbidity or particle size distribution. A commenter suggested that EPA should make it clear that without measurement of fluorescence signatures (fluorescence measures across multiple wavelengths), most commonly used in-situ fluorometers only provide an approximate indication of oil in the water column. These commenters requested that EPA clarify that these methods cannot distinguish oil signals, and added that most dispersants fluoresce as well, potentially adding to difficulties interpreting in-situ fluorescence measurements.

The Agency agrees that collection of samples from outside and inside the slick area prior to and after dispersant application serves to inform the initial effectiveness of surface dispersant application. SMART Tier II and III protocols similarly note three primary target locations: (1) Ambient background water (no oil); (2) oiled surface slicks prior to dispersant application, and (3) post-application, after the oil has been treated with dispersants. EPA emphasizes that these water column sampling requirements are not replacing the SMART protocols and that EPA assumes the SMART Tier III protocol is also being implemented as part of the response. EPA is requiring that sample collection under the new monitoring requirements follow established standard operating and quality assurance procedures.

The Agency disagrees that fluorometry is a redundant measurement. For crude petroleum oils, the aromatic fraction is responsible for the fluorescence property of petroleum. Instruments that measure particle size, such as the LISST, do not distinguish between oil droplets and other types of particles in the same size range. Fluorometers can be targeted to the type of oil discharged and the excitation and emission wavelengths chosen should match the aromatic properties of the oil discharged. Fluorescence is a valuable screening tool deployed during a response, providing a rapid indication of potential dispersed oil in the water column, as well as an indicator of dispersion effectiveness. The final rule requires the responsible party to conduct a fluorescence intensity analyses on water samples collected to determine fluorescence signatures of the dispersed oil. To the extent the commenter believes that most dispersants fluoresce, potentially adding to the difficulty interpreting in-situ fluorescence measurements, the Agency expects this concern will be addressed in the DMQAPP.

iii. Dissolved Oxygen (DO) (Subsurface Only)

A commenter indicated support for the collection of DO samples and agreed with the proposed approach of using the Winkler titration method to verify sample results. A commenter requested that the proposed rule be updated to require DO measurements using the best available devices. They also indicated that measurement verification using Winkler titration is impractical and outdated. They recommended instead that verification be conducted by the use of consistent sensor cleaning procedures, calibration tests, and redundant sensors which can be compared. In an effort to avoid slowing the process and information flow, they recommended that verification should only be required on a fraction of collected samples instead of for every sample.

The Agency recognizes that relying solely on measurements from in-situ oxygen instruments may lead to an erroneous interpretation of oxygen data. While the Agency does not require Winkler titration as confirmatory analysis in the final rule, the Agency believes that ex-situ DO measurements should generally be conducted using Winkler titrations to confirm in-situ DO measurements and notes that the OSC can require DO measurements be conducted using Winkler titrations if necessary. The Agency disagrees that measuring DO using Winkler titrations is impractical and outdated. For example, the use of Winkler titrations to measure dissolved oxygen provides for accurate measurements in subsurface waters where DO may already be low. Additionally, the final rule does not state the number of samples required for DO verification because this and the confirmatory analysis methodology should be addressed in the DMQAPP to ensure that DO measurements follow established standard operating and quality assurance procedures that are reliable and defensible.

The Agency agrees with commenters' concerns regarding tailoring DO measurements. DO is an important variable to monitor in the application of dispersants, particularity in subsurface waters that may inform operational decisions. For surface dispersant application, DO is expected to be higher in the mixed layer in the surface water. Because DO is expected to be higher in the mixed layer of the surface water, the Agency is not finalizing the proposed DO requirements for surface dispersant application. However, the Agency strongly recommends RRTs and OSCs, as part of their authorized activities under the NCP, consider adding DO as a monitoring requirement for surface dispersant application in surface waters where DO is believed to be limited.

iv. Total Petroleum Hydrocarbons, Individual Resolvable Constituents, Including Volatile Organic Compounds, Aliphatic Hydrocarbons, Monocyclic, Polycyclic, and Other Aromatic Hydrocarbons, Including Alkylated Homologs, and Hopane and Sterane Biomarker Compounds

A commenter expressed support for the proposed requirements to analyze TPHs, individual resolvable constituents, including volatile petroleum hydrocarbons and branched/normal aliphatic hydrocarbons. A commenter also indicated support for the requirements to analyze monocyclic, polycyclic, and other aromatic hydrocarbons, including their alkylated homologs and hopane/sterane biomarker compounds. They suggested that results from these analyses can inform forensic assessment of collected samples. A commenter suggested that EPA should specify a standard analytical method for performing these analyses (from the multiple methods available) for water column samples. A commenter indicated that, as discussed by EPA, measurement of TPH alone is inadequate when attempting to assess the fate and effects of dispersed oil during a response. A commenter also communicated support for the proposed rule, adding that identifying concentrations of oil and associated components, as opposed to only the presence or absence of oil, is critical.

A commenter suggested that EPA adopt quick-screening methods for sampling TPHs by means of a hand-held gas chromatograph flame ionization detector (GC–FID). They indicated that detailed analysis for these components will not inform response decision-making and should instead be completed as part of the NRDA process. This commenter also suggested that the analytical requirements should apply to a fraction of the collected samples as opposed to every water sample.

EPA did not propose to use only TPH measurements to assess the fate and effects of dispersed oil, but rather included it along with other monitoring approaches in the final rule to assess the fate and effects of dispersed oil. The Agency is not specifying the type of analytical equipment or methods needed for sample collection. The Agency believes that standard operating procedures should describe the appropriateness of the sampling method and should be included in the DMQAPP.

The Agency disagrees that the detailed analysis of oil constituents is more appropriate for the NRDA process, and believes that comprehensive monitoring in certain discharge situations is necessary to determine the overall effectiveness of dispersants and should extend beyond the initial dispersant application to include the transport and environmental effects of the dispersant and dispersed oil in the water column. The final rule requires that sample collection follow established standard operating and quality assurance procedures that are reliable and defensible. Additionally, the final rule does not state the number of water samples required for analysis because this is to be determined on a case-by-case basis.

v. Methane, if Present (Subsurface Only)

A commenter responded to this section of the proposed rule which requires the measurement of methane in water column samples during response activities. This commenter stated that monitoring of methane is unnecessary because it is linked to potential oxygen depletion, and therefore, is sufficiently covered with the monitoring requirements for DO.

The Agency agrees that methane biodegradation may lead to oxygen depletion but disagrees that it is sufficiently covered by the monitoring requirements for DO. Depletion of DO may be caused by other factors such as the biodegradation of lower molecular weight alkanes. Should DO depletion occur, understanding the correlation of potential substrates to DO is an important factor relative to the effects of dispersant use and may inform response decision-making.

vi. Heavy Metals Analysis, Including Nickel and Vanadium

Some commenters expressed support for the proposed updates. They agreed that heavy metals should be analyzed in monitoring samples, including nickel and vanadium concentrations. A commenter expressed concern that the analysis of heavy metals in water column samples does not have any relevance to monitoring of dispersed oil and does little to inform response decision-making. The commenter indicated they see no operational reasoning behind the collection of these data and suggested that the requirement for heavy metal analyses would lead to unnecessary delays and costs during response efforts.

The Agency disagrees that the analyses of heavy metals in water column has no relevance to monitoring of dispersed oil and does little to inform response decision-making. Crude petroleum oil may contain heavy metals, including nickel and vanadium.[2] The December 17, 2010 OSAT report entitled ''Summary Report for Sub-Sea and Sub-Surface Oil and Dispersant Detection: Sampling and Monitoring'' specifically included nickel and vanadium as part of the water sampling analyses. Furthermore, EPA specifies that dispersant products must be analyzed for arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the product sample as part of the NCP product listing requirements under 40 CFR 300.915(a)(11)(i). Dispersing oil may increase the bioavailability of those heavy metals to marine organisms. In addition, monitoring heavy metals serves to inform water quality standards and thus is an important parameter to include in the monitoring requirements. The Agency does not expect these monitoring requirements to lead to delays given the flexibility provided under the new daily reporting provisions. Furthermore, the Agency disagrees with the characterization that these analyses lead to unnecessary costs for the reasons stated above in this paragraph and elsewhere in this Response to Comments document that address the appropriateness of this final action.

vii. Turbidity

Commenters indicated support for the proposed turbidity measurement requirement. A commenter stated that turbidity measurements are useful for determining the potential for dispersants and other products to act as sinking agents. The commenter suggested that in cases where turbidity may cause treated oil to sink, the use of dispersants or other treating agents should be prohibited.

A commenter who also indicated support for the proposed requirements for the collection of turbidity data agreed with EPA regarding concerns about the potential for agents to enhance the formation of oil-mineral aggregates (OMA) and marine oil snow (MOS) in the water column, putting benthic ecosystems at risk.

The Agency acknowledges commenters' support for the turbidity requirement. Turbidity is a general measure of water clarity and is measured by how much the amount of material suspended in water decreases the passage of light through the water. Suspended materials may include soil particles (clay, silt, and sand), algae, plankton, microbes, and other substances. Turbidity measurements provide a relatively quick assessment of suspended materials in the water bodies and are useful in determining the presence of materials that could interfere with oil particle size measurements. Finally, turbidity is included as a monitoring parameter in the SMART Tier III protocol.

The Agency notes that prohibition of the use of chemical agents is not addressed in this final action. Furthermore, dispersants are not sinking agents because they are not intended to sink the oil to the bottom of a water body and are defined separately from sinking agents in the NCP. However, the Agency recognizes concerns regarding the potential for dispersed oil as one pathway to contribute to Marine Oil Snow Sedimentation and Flocculent Accumulation (MOSSFA) in the water column that could potentially lead to settling. This final action does not prevent the OSC or RRTs, as part of their authorized activities under the NCP, from requiring additional monitoring parameters, which may include benthic biota monitoring, sediment characterization, and other physical measurements of solids in the water (*e.g.,* total suspended solids).

viii. Water Temperature, pH, and Conductivity

The Agency received no comments specific to these provisions and is finalizing the requirements as proposed.

ix. Carbon Dioxide (CO_2)—Removed

A commenter responded to the section of the proposed rule which requires the measurement of CO_2 in water column samples during response activities. This commenter indicated that the proposed rule is unclear in term of the benefits that CO_2 monitoring provides that are not already provided by DO monitoring. They also expressed concern that there is a limit to the number of sensors that can be deployed from a vessel during a response. The commenter stated that adding CO_2 to the analysis suite complicates the deployment of these instrument arrays.

The Agency notes that the aerobic biodegradation of oil constituents not only consumes DO but would also produce CO_2. Increases in the CO_2 concentration that coincide with decreases in the DO concentration would provide credible evidence that biodegradation of oil is occurring. The Agency proposed measuring the in-situ CO_2 for subsurface dispersant

[2] Walters, C. (2021). Petroleum. In Kirk-Othmer Encyclopedia of Chemical Technology, (Ed.). *https://doi.org/10.1002/0471238961.1518090702011811.a01.pub3.*

applications because the Agency believed it would be a good indicator of microbial oxidation and inform the OSC on potential fate. However, the Agency agrees that adding CO_2 sensors may not always be practicable and that the other monitoring requirements indirectly inform potential biodegradation. Therefore, the Agency is not finalizing this proposed requirement at this time. The RRTs and OSCs, as part of their authorized activities under the NCP, may still consider adding CO_2 measurements and other biodegradation characterization assessments on a case-by-case basis.

D. Oil Distribution Analyses

The new provisions include requirements for the responsible party to characterize the dispersant effectiveness and oil distribution, including trajectory analysis. As the OSC's oversight role over the responsible party is already established in the NCP, the Agency has removed the phrase ''in consultation with the OSC'' for § 300.913(c) the oil distribution analysis. This characterization is to consider available technologies, account for the condition of oil, dispersant, and dispersed oil components from the discharge location, and describe any associated uncertainties.

Several commenters supported EPA's proposed language for § 300.913(c). A commenter supported this section but commented that the regulation should recognize the limitations of oil distribution analyses in areas that lack good ocean current predictive models or observational data. Another commenter expressed strong support for efforts to elucidate dispersant effectiveness but noted that effectiveness monitoring should be used only when it does not impede response operations. Another commenter stated that EPA should acknowledge that the available methods for anticipating the movement of dispersed oil plumes are limited and may complicate the monitoring process. A commenter noted that sampling and monitoring programs should acknowledge uncertainties about where an oil plumes may travel.

The Agency recognizes oil distribution analyses may be affected by the data quality used to inform the analysis, which also includes parameters based on assumptions. In addition, trajectory models, which are used to predict the movement of dispersed oil plumes, may have uncertainties associated with modeling parameters. EPA is amending the regulatory text to clarify that oil distribution analyses includes trajectory modeling since this is an essential aspect of dispersed oil movement as the result of dispersant application, particularly in areas where water currents are highly influential to the oil discharge and inform water sampling locations. EPA agrees with concerns that these uncertainties could affect sampling and monitoring programs. Therefore, the Agency is amending the regulatory text to recognize uncertainties associated with trajectory modeling as part of the distribution analysis.

A commenter suggested including a NOAA SSC in the review of data provided in this section to provide valuable credibility and support to the OSC, while noting that perceptions of the responsible party directing the process should be avoided. Another commenter suggested EPA might want to consider including directions for the use of local expertise in these analyses.

The NCP describes the role of SSCs under 40 CFR 300.145(c) to include providing scientific support for operational decisions and for coordinating on-scene scientific activity during a response, as requested by the OSC. Coordinating on-scene scientific activity during a response may include consideration of input from local experts. The NCP also describes the OSC's roles and responsibilities under 40 CFR 300.120, which includes directing response efforts and coordinating all other efforts at the scene of a discharge. As a result, EPA believes the NCP already sufficiently recognizes the SSC's role in support of the OSC.

Some commenters stated that the rule needs to be clearer on what is required for surface monitoring and what is required for subsea monitoring, suggesting that each subsection should be divided into the aspects. These commenters also suggested that EPA should consider changing ''best available technologies'' to ''best practicable technologies'' in this section, to avoid equipment that is not suitable for field conditions. A commenter stated that the best available technology requirement should acknowledge aerial photography as a tool to measure effectiveness, as this was a key method of assessment during the Deepwater Horizon response. The commenter also stated that the relative effectiveness of surface application should be determined using the SMART protocols, noting that the amount of oil on the surface to which dispersants are being sprayed is impossible to determine, so effectiveness can't be quantified, and that the analytical equipment often cannot return to the spray site in time to capture the information requested as the dispersant plume quickly dilutes or cannot be found.

The Agency believes the final rule is clear relative to the requirements for subsurface and surface monitoring and that dividing the monitoring section into separate subsections is unnecessary. The Agency has noted in the regulatory text and provided additional clarification in this preamble to delineate where requirements are different. EPA recognizes the commenter's concern relative to the term ''best available technology'' but disagrees that it should be changed to ''best practicable technologies'' to avoid equipment that is not suitable for field conditions. The proposal did not specify equipment in the *Oil Distribution Analyses* section, but rather included the term ''best available technology'' to capture advances in technology (*e.g.,* modeling and equipment). The intent was to ensure these advances in characterizing the dispersant effectiveness and oil distribution continue to be implemented. For example, oil distribution is typically informed by trajectory modeling to predict the movement of dispersed oil plumes. The Agency recognizes that improvements to trajectory modeling continue over time and seeks to incorporate such advancements in the new monitoring requirements. The Agency is finalizing the term ''considering available technologies'' instead of the term ''best available technology.'' Available technologies used and their applicability to the specific discharge situation should be described in the DMQAPP. The Agency believes this new provision provides the opportunity for the OSC to consider relevant technologies and addresses the intent to capture advances in technology.

EPA disagrees that aerial photography, as a tool to measure effectiveness, should be acknowledged as a best available technology. EPA recognizes that the SMART Tier I protocol bases initial dispersant effectiveness assessment using photographic job aids or advanced remote sensing instruments flying over the oil slick with a trained observer. EPA also recognizes that NOAA developed a Dispersant Application Observer Job Aid, which is a field guide for responders trained in observing and identifying dispersed and undispersed oil, describing oil characteristics, and reporting this information to decision-makers. However, EPA is unaware of any similar NRT-approved protocols or NOAA-developed job aids to assess the initial effectiveness of subsurface

dispersant application. Furthermore, the requirements for monitoring surface dispersant application for atypical dispersant applications necessitate specific considerations beyond those addressed by SMART. According to the 2013 NRT *Environmental Monitoring for Atypical Dispersant Operations* guidance document, such atypical uses of dispersant during a response were not addressed in the existing SMART monitoring program. While some monitoring requirements are only included in the SMART Tier III protocol (*e.g.,* turbidity, pH, conductivity, temperature), other requirements (*e.g.,* in-situ droplet size distribution) important to understanding dispersant effectiveness are not.

A commenter stated that the relative effectiveness of the surface application should be determined by using the SMART protocols, but also noted the analysis equipment often cannot return to the spray site in time to capture the information requested, because the dispersant plume quickly dilutes or cannot be found. According to the SMART protocols, Tier II and III use towed fluorometry to characterize effectiveness, requiring the vessel to pass through the oil slick after dispersant is applied. For the SMART Tier II protocol, the team collects data in three primary target locations: (1) Ambient background water (no oil); (2) oiled surface slicks prior to dispersant application, and (3) post-application, after the oil has been treated with dispersants. The Tier III protocol follows procedures from the Tier II protocol, and in addition collects information on the transport and dispersion of the oil in the water column to help verify that the dispersed oil is diluting toward background levels. The commenter's characterization that the dispersant plume quickly dilutes or cannot be found seems contrary to their recommendation to use the SMART protocols data collection procedures. The Agency notes that the commenter did not provide supporting evidence that the dispersed oil plume always quickly dilutes and cannot be found. The assumption that dispersed oil plume quickly dilutes and cannot be found does not account for the many factors that impact dispersant effectiveness, including for example the specifics of the discharge situations (*e.g.,* continuous discharges), the weathering of the oil, and the mixing conditions. Both the SMART protocols and the monitoring provisions finalized in this action are designed to provide feedback on the efficacy of dispersant application in dispersing the oil. The Agency believes monitoring provides information on dispersant effectiveness, including for those occurrences of non-detection of dispersed oil after dispersant application. The Agency also notes that advances in technology using remote sensing vehicles may allow for data collection prior to and after dispersant application with responders in an offset area to inform the fate and transport of the oil plume.

A commenter stated the monitoring requirements need the concurrence of the DOI's regional response team (RRT) representative as well, since these results provide information relevant to DOI's trust resources. In addition, a commenter stated that because of inherent conflict of interest, a qualified third party acceptable to the OSC, EPA, and the DOI RRT representatives should conduct all monitoring.

EPA recognizes conflicts of interest concerns. The Agency notes that the NCP addresses the OSC's oversight role of the responsible party as part of the OSC's authority. The final rule does not preclude the OSC from seeking a qualified third party to conduct additional monitoring or from consulting with relevant governmental agencies, or from performing or having a third party perform monitoring. The Agency disagrees that decisions regarding monitoring of oil distribution and weathering are left up to the responsible party as the Clean Water Act and the NCP give the OSC clear authority to direct the responsible party during a response. The Agency also disagrees that the responsible party is the primary advisor for aspects of dispersant decision-making and monitoring. The monitoring requirements are intended to provide decision-makers, whose roles and responsibilities are described in the NCP, with relevant information to consider. The monitoring requirements do not prevent the OSC and other response decision-makers from considering monitoring information, including monitoring information collected by other entities besides the responsible party, to also be used to inform dispersant use decisions. While the final rule places the monitoring requirements on the responsible party, these requirements should not be interpreted or perceived as the responsible party directing the process or controlling how the dispersant effectiveness and dispersed oil fate data are interpreted. The Agency notes that the NCP already provides for natural resource trustee input for dispersant use as a response option under 40 CFR 300.910—Authorization of Use, and § 300.305(e)—Phase II—Preliminary assessment and initiation of action.

E. Ecological Characterization

The new provisions include requirements for the responsible party to characterize the ecological receptors (*e.g.,* aquatic species, wildlife, and/or other biological resources) and their habitats that may be present in the discharge area and their exposure pathways. As the OSC's oversight role over the responsible party is already established in the NCP, the Agency has removed the phrase ''in consultation with the OSC'' for § 300.913(d) ecological characterization. As part of this characterization, the responsible party must include in this characterization those species that may be in sensitive life stages, transient or migratory species, breeding or breeding-related activities (*e.g.,* embryo and larvae development), and threatened and/or endangered species that may be exposed to the oil that is not dispersed, the dispersed oil, and the dispersant alone. The responsible party must also estimate an acute toxicity level of concern for the dispersed oil using available dose/response information relevant to potentially exposed species.

Several commenters agreed with EPA's proposed language requiring ecological characterization and the use of species sensitivity distributions and ecotoxicity benchmarks. These commenters emphasized that careful monitoring of biological receptors is important but commented that this should be done by independent scientists, and not by the responsible party because of conflict of interest. Another commenter generally supported the proposed additions to § 300.913(d). Another commenter stated that ecological characterizations should be done by scientists on behalf of local resource agencies, given that the required information can be complex and subtle, requiring expertise on seasonality, life cycles, habitat interactions, important and sensitive habitats, and other physical and biological factors that influence how ecosystem components respond to oil, dispersant, and dispersed oil.

Some commenters offered amendments to this section. A commenter stated that EPA should require consultation with the DOI and Department of Commerce (DOC) natural resource trustees, not just the OSC, when developing ecological-receptor characterization. Another commenter stated that sensitive receptors and toxicity thresholds should be developed at a local/regional level based on the marine ecosystem, food web, abundance

of primary and secondary producers, and other factors that influence ecotoxicity, given significant variation throughout the United States.

The Agency recognizes commenters' position that independent scientists conduct monitoring of biological receptors, rather than the responsible party, because of potential conflict of interest. The Agency notes that the NCP addresses the OSC's oversight role of the responsible party. The monitoring amendments in the final rule do not preclude the OSC from seeking independent parties to conduct additional monitoring, including from local, state and federal agencies. EPA agrees with concerns that the required information can be complex and subtle, requiring expertise on seasonality, life cycles, habitat interactions, important and sensitive habitats, and other physical and biological factors that influence how ecosystem components respond to oil, dispersant, and dispersed oil. Furthermore, the NCP provides for natural resource trustee input for dispersant use as a response option under 40 CFR 300.910—Authorization of Use, and § 300.305(e)—Phase II—Preliminary assessment and initiation of action. Therefore, the Agency does not believe it is necessary for additional requirements under the monitoring section to recognize the role and responsibilities of natural resource trustees relative to the responsible party developing ecological-receptor characterization.

The Agency agrees with commenters that sensitive receptors and toxicity thresholds should consider relevant local/regional factors. EPA agrees with commenters that the review of acute toxicity information should include actual toxicity test results of potentially exposed species in the area of the spill, but the Agency also recognizes that the use of a surrogate species when constructing the species sensitivity distribution (SSD) may be necessary if relevant toxicity data for site-specific species is unavailable.

Some commenters stated that they support environmental monitoring that contributes to operational decision-making, but also stated that the required monitoring to determine possible environmental effects is too time consuming to support dispersant operations decisions and that conducting the required ecological characterization of the spill site may not be possible in the available response time frame. The commenters stated that if the untreated oil is likely to drift ashore and impact a sensitive coastal resource within a day or two unless it is dispersed, there will be a very finite period of time for such considerations suggested in the proposed rule. Another commenter agreed that monitoring to determine possible environmental effects is too time consuming and added that monitoring required to determine possible environmental effects is already accommodated within the existing Incident Command System (ICS) structure (*e.g.,* wildlife team and the NRDA team). A commenter stated that while known ecological benchmarks may be constructive, it is not clear how exceedances of the thresholds would impact decision-making in practice. This commenter stated that requiring dispersant operations to stop due to a single-species exceedance may result in higher environmental damage overall. The commenter suggested that SSDs are a misuse of the method that is counter to establishing frameworks appropriate to dynamic ocean settings. The commenters stated that NEBA should be the basis to make operational decisions on whether dispersants and/or other agents should be used during a response.

The Agency agrees with comments that support environmental monitoring as contributing to operational decision-making, but disagrees with the comment that monitoring to determine possible environmental effects is too time consuming to support dispersant operations decisions and that monitoring required to determine possible environmental effects is already accommodated within the existing ICS organizational structure (*e.g.,* wildlife team and the NRDA team). A goal of NRDA is to compensate the public for losses to natural resources and resource services resulting from injury as a result of an oil discharge. While a NRDA team may be recognized in the ICS, it is independent of, and complementary to, the response action. The monitoring requirements are tailored to dispersant use and to inform response decision-making regarding that use, while other ICS organizations focus on general environmental effects of the response, not necessarily related to dispersant use. The Agency also disagrees that conducting the required ecological characterization of the spill site may not be possible in the available response time frame. The premise that untreated oil is likely to drift ashore and impact a sensitive coastal resource within a day or two unless it is dispersed implies that no other response options are available to prevent impacts to sensitive coastal resources and that these sensitive coastal resources are the sole response priority to consider in determining dispersant use. Dispersants are not the only option for oil spill response: Other response options may also prevent or lower overall environmental damage. When responding under the NCP, decisions on dispersants and/or other chemical agents made by the OSC and other federal agencies with roles and responsibilities under the NCP during a response are to be made in accordance with the NCP. While there is no prohibition on the use of environmental tradeoff methodologies, the use of such methodologies must be in conformance with the statutory and regulatory authorities that govern dispersant use. Furthermore, the Agency noted in the proposed rule (80 FR 3398) relevant sources of information (*e.g.,* environmental assessments or statements, Federal and state environmental databases, ACP-Fish and Wildlife and Sensitive Environments Plan Annex; NOAA-Environmental Sensitivity Indices) that the responsible party may refer to in developing the characterization of ecological receptors. In addition, applicable facility or vessel response plans may also have relevant information. It is important to note that this final action is not requiring this information to be included in these planning documents, rather that these documents may serve as resources of relevant information. Finally, it is unclear how methodologies cited and supported by commenters evaluate environmental trade-offs for decision-making without the characterization of ecological receptors.

Another commenter noted that the phrase ''but not be limited to'' should be added to a phrase in the proposal so the term ''include'' is not interpreted as limiting. ''The Agency believes that the ecological characterization should include, but not be limited to, those species that may be in sensitive life stages . . . .''

The Agency acknowledges the commenter's suggestion that the phrase ''but not be limited to'' be added to a phrase in the proposal so the term ''include'' is not interpreted to be limiting, so that the sentence reads: ''The Agency believes that the ecological characterization should include, but not be limited to, those species that may be in sensitive life stages . . .''. The Agency did not intend and does not believe that the term ''including'' is limiting. However, the Agency is modifying the sentence in the proposal to reflect this suggested change for clarity.

A commenter stated that the regulation should specify that an invitation to participate, at least in a

consultation and review role, should be extended to the appropriate federal, state, and local authorities. A commenter stated that EPA should add to § 300.913(d) that a DOI representative should participate in this process.

Applicable Area Contingency Plans include input from relevant local, state, and federal agencies whose roles and responsibilities are identified in the NCP for the Area Committee. While the Agency did not propose to amend requirements for Area Contingency Planning and those requirements are outside the scope of this final action, EPA recognizes the Area Committee's role in ecological characterization as provided in the Fish and Wildlife and Sensitive Environments Plan in 40 CFR 300.210(c)(4). The final rule does not prohibit the OSC from seeking input from the appropriate federal, state, and local authorities.

A commenter asked EPA to clarify that toxicity monitoring is required following dispersant applications. Another commenter suggested the following revisions to EPA's approach to ecotoxicity benchmarks (EBs):

- The proposed approach will not fully characterize potential impacts on biological resources. Where EBs exist for these other hydrocarbon constituents, measured concentrations of those parameters need to be compared to these more specific toxicological benchmarks;
- The toxicity level should also include the dispersant since it has been found that dispersants alone are generally less toxic than oil, but that most dispersant and oil mixtures are more toxic than oil alone;
- The proposed approach to compare water concentrations with EBs for heavy metals and total petroleum hydrocarbon will not fully characterize potential impacts on biological resources;
- Examining only acute toxicity data does not capture the full effects of a spill, since it does not take into account indirect or sub-lethal effects, which could also alter populations and ecological communities;
- The review of acute toxicity information should include actual toxicity test results of potentially exposed species in the area of the spill, since the use of a surrogate species could vastly underestimate the actual toxicity of species in the area;
- EPA should calculate separate SSDs for unique environments;
- Toxicity testing using natural light will be important given the well documented phenomenon of photo-enhanced toxicity of certain oil constituents; and,
- The commenter expressed concern about EPA's approach to derive chronic toxicity benchmarks by applying safety factors to the acute toxicity EBs because the specific chemicals and toxicity mechanisms involved in acute toxicity are different from those involved in chronic toxicity.

The proposed rule discussed an approach to monitor acute toxicity in the water column by comparing TPH concentrations in water samples to TPH-based EBs or to chronic toxicity benchmarks derived by applying a safety factor to the acute toxicity EBs. The Agency stated that SSDs, which allow for species relevant to the location of the discharge to be considered, could be developed for representative oils (*e.g.,* crude oils) using existing acute toxicity values where sufficient species diversity are available. The Agency acknowledges that examining only acute toxicity data does not capture the full effects of a spill because it does not take into account indirect or sub-lethal effects. The Agency recognizes that specific chemicals and toxicity mechanisms involved in acute toxicity can be different from those involved in chronic toxicity. However, applying safety factors to the acute toxicity-based benchmarks to derive chronic benchmarks is not intended to discern toxicity mechanisms; rather it is intended to account for potential toxic impacts to relevant species. Furthermore, EPA recognizes that not all acute toxicity data is derived using similar exposure conditions and that SSDs should be calculated from acute toxicity data that reflects the site-specific exposure profiles. Finally, EPA recognizes the proposed approach does not fully characterize potential impacts on biological resources from other exposure mechanisms that may cause adverse impacts, such as oil smothering and coating.

While the Agency did not propose to establish specific EB thresholds, EPA recognizes that EBs should be consistent with information in applicable ACPs. The Agency noted in the proposed rule that EBs could be computed from the fifth percentile of the SSD as the hazard concentration 5 percent (HC5), as they are considered protective of 95 percent of species, have been used by EPA for developing ambient water quality criteria, and are generally accepted by the international risk science community. For the reasons above, EPA disagrees with commenters who suggested that SSDs is counter to establishing frameworks appropriate to dynamic ocean settings. Furthermore, EPA is clarifying the final rule text to specify that acute toxicity levels of concern are determined using the SSD approach.

EPA did not propose in the monitoring section that dispersant operations stop due to a single-species exceedance. However, EPA does not agree that stopping dispersant use over a single species exceedance will necessarily result in higher environmental damage overall. Dispersants are not the only available response tool, and other response options may also lower overall environmental damage. EPA believes that Congress' primary intent in regulating products (*e.g.,* dispersants) under Subpart J is to protect the environment, including the water column, from possible deleterious effects caused by the application or use of these products. Decisions on the use of dispersants and other agents used during a response are to be made in accordance with the NCP and the governing statute(s). Environmental tradeoff methodologies where dispersants are considered must be in conformance with the statutory and regulatory authorities that govern dispersant use.

F. Immediate Reporting

The new provisions require the responsible party to immediately report to the OSC and, in coordination with the OSC, to the RRT any: (1) Deviation of more than 10 percent from the mean hourly dispersant use rate for subsurface application, based on the dispersant volume authorized for 24 hours use, and the reason for the deviation; and (2) ecological receptors of environmental importance, and any other ecological receptors as designated by the OSC or the Natural Resource Trustees, including any threatened or endangered species that may be exposed based on dispersed plume trajectory modeling and level of concern information.

Several commenters supported EPA's proposed immediate reporting provisions. Some commenters advocated for a 10 percent threshold for reporting deviations from the planned application rates for surface application in addition to subsurface application, while another commenter stated they do not support any subsurface application. A commenter stated that because the responsible party is already required to report hourly surface application rates on a daily basis under § 300.913(f), the commenter believes that adding a requirement for immediate reporting requirement in the case of deviations will add little, if any, marginal compliance costs.

In this action, the Agency is not including a reporting requirement of a

10 percent deviation threshold for reporting requirement from the planned application rates for surface dispersant application. The Agency recognizes differences in the subsurface and surface application of dispersants. For a continuous discharge, subsurface applications may occur uninterrupted at relatively few discharge locations. Surface application is typically made by one or more aircraft which have a relatively limited capacity to apply dispersant over multiple oil patches. This limited capacity requires aircraft to refuel and resupply. While multiple aircraft may be used, deviations of surface dispersant application rate from a single aircraft are not expected to confound monitoring data interpretation in a similar manner as 10 percent deviation from subsurface application. Furthermore, the Agency is requiring daily reports of the specific hourly dispersant application rate and total amount of dispersant used for surface application to monitor dispersant use activity. The daily reports will inform changes in surface dispersant application usage. Finally, the RIA does not include a compliance cost because the proposed provision addressing more than 10 percent deviation for surface applications is not being finalized.

A commenter stated that all reports should simultaneously be made public. EPA recognizes the commenter's request that all reports should simultaneously be made public. While EPA shares the commenter's desire to make this information publicly available in a timely fashion, the Agency disagrees that this reporting should occur simultaneously with reporting to the OSC. Public communications authorities under the NCP are outside the scope of this action. The Agency notes that the OSC directs response efforts and coordinates all other efforts at the scene of a discharge in accordance with the NCP, including public information and community relations. The NCP provides instruction to the OSC on ensuring all appropriate public and private interests are kept informed and that their concerns are appropriately considered throughout a response. The Agency believes the OSC should be given the opportunity to evaluate response-related information and communicate relevant results to the public within the existing NCP framework.

A commenter suggested that specifics required in § 300.910(e) should be provided to the OSC and RRT. A commenter requested that any field observations of impacts to sensitive species be reported to the OSC and trustee agencies. This could include dispersant applications which inadvertently spray birds, marine mammals, sea turtles, or other sensitive species. While the commenter refers to § 300.910(e), the Agency believes that the commenter intended to include § 300.913(e) because the heading of the section to the comment referred to § 300.913(e–f). The Agency agrees that the RRT, which includes the natural resource trustees, should receive this information within the command structure of the National Response System (NRS). Working within the command structure provides an orderly and efficient review of monitoring and other response-related information by the OSC and allows the OSC to develop situational awareness and efficiently and effectively collaborate with agencies designated in the NCP that have relevant roles and responsibilities in the response. EPA has revised the regulatory language in the final rule by adding a new provision, § 300.913(g), to provide that the responsible party must immediately report to the OSC and coordinate with the OSC to provide the applicable RRT(s) (including any incident-specific RRTs) with this information. The Agency notes that including the RRT(s) as recipients of the immediate reporting information addresses a commenter's request to include natural resource trustees.

Some commenters stated that EPA should not develop requirements for daily authorizations of dispersant quantities. Another commenter also noted that the rule requires reporting based on deviations from authorized dispersant application in a 24-hour period, stating that EPA should not have daily authorizations for dispersant application because such restrictions would tremendously complicate dispersant operations and circumvent the NEBA process.

EPA did not establish requirements on daily authorization of dispersant quantities in the final rule on the monitoring requirements. The Agency is establishing an immediate reporting provision in this final action to provide a margin for variation within 10 percent of the mean hourly subsurface dispersant application rate to account for equipment performance. The Agency believes this margin adequately accounts for variations in dispersant injection equipment without being overly restrictive. The intent of the requirement is for immediate reporting of more than 10 percent deviations for the subsurface dispersant application that were authorized during that reporting period. EPA did not intend to require, and § 300.913(e) does not establish, that authorization is required in 24-hour increments. The OSC makes authorization of use decisions within the NCP framework. Authorization of use is outside the scope of the monitoring requirements in this final action. While an environmental trade-off framework may inform dispersant use, it is not required under the NCP. Results from daily water column sampling provide input data to refine predictions of the likely dispersed oil direction using trajectory modeling and may also inform decisions to alter dispersant application in order to minimize effects on ecological receptors, including biological resources.

A commenter stated real-time ecological receptor analysis is unrealistic and should be part of a Consensus Ecological Risk Assessment (CERA)/NEBA process. Another commenter requested that any field observations of impacts to sensitive species be reported to the OSC and trustee agencies. The new monitoring requirements provide that the responsible party will characterize the ecological receptors (*e.g.,* aquatic species, wildlife, and/or other biological resources), their habitats, and exposure pathways that may be present in the discharge area. The Agency understands that some ecological receptors are likely to be impacted and is clarifying that the immediate reporting requirement focuses on ecological receptors of environmental importance, as well as any other ecological receptors as identified by the OSC or the natural resource trustees, including threatened or endangered species that may be exposed to dispersed oil based on trajectory modeling and the estimated acute toxicity level of concern. EPA recognizes that the OSC or the natural resource trustees may also want to include critical habitats as applicable within the immediate reporting requirements for ecological receptors. The NCP already provides an existing organizational structure that allows the natural resource trustees to relay any requests they have regarding the monitoring requirements and resulting information to the OSC. The Agency is revising the regulatory language in the final rule to reflect this clarification. This revision also addresses a commenter's request to recognize prey species which these receptors depend upon for food that may be impacted by the discharge or the response.

A commenter said the OSC should have discretion to determine the frequency of reporting and that the rule does not specify what happens if the reporting requirements are not met for any reason. The Agency recognizes that

the OSC may require other immediate notifications beyond those provided in the final rule and that the final rule provides a minimum set of immediate reporting criteria. Finally, the Agency notes that enforcement of regulatory provisions is outside the scope of the final rule. The final rule does not change any existing enforcement authorities.

G. Daily Reporting

The new provisions require daily reporting by the responsible party to the OSC and to the RRT water sampling and data analyses collected in § 300.913(b). These reports are to include: (1) For each application platform, the actual amount of dispersant used for each one-hour period, and the total amount of dispersant used for the previous 24-hour reporting period; (2) all collected data and analyses of those data within a time frame necessary to make operational decisions (*e.g.,* within 24 hours of collection), including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate time frame is authorized by the OSC; (3) for analyses that take more than 24 hours due to analytical methods, provide such data and results as available but no later than 5 days after sample collection, unless an alternate time frame is authorized by the OSC; and (4) estimates of the daily transport of dispersed and non-dispersed oil and associated volatile petroleum hydrocarbons, and dispersants, using available technology as described in § 300.913(c).

Section 300.913(f)(1) of the final rule was altered to provide clarity. The text ''For each application platform, the . . .'' was added prior to the draft language, to ensure that the reporting would be for each platform, instead of the response as a whole. The term ''application platform'' includes individual aircraft, vessels, and any other structures, devices, or other means that are used to apply dispersants. This section was also modified, replacing the term ''actual dispersant application rate for each one-hour period'' with ''the actual amount of dispersant used for each one-hour period''. This revision clarifies that the reported information must reflect the actual amount of dispersant applied each hour, rather than an hourly rate based on the total amount of dispersant applied averaged over a 24-hour period. The requirement is intended to show hourly changes of the actual amount of dispersant used, which a calculated average hourly rate would not provide. This information will allow the OSC and RRT to better analyze if the application rates are at, below, or exceeding the authorized quantities, if dispersant use is per manufacturer's recommendations, and if the response actions are effective.

EPA is also revising the regulatory text in the final rule to reflect that § 300.913(c) changed ''. . . best available technology . . .'' to ''. . . considering available technologies . . .'' which includes trajectory modeling. See the *Oil Distribution Analyses* discussion in this preamble. The Agency is also revising the final rule text to include RRT as recipients of the daily reporting information for similar reasons as described in *Immediate Reporting* discussion in this preamble.

Several commenters supported EPA's proposal to require daily reporting of sampling and data analyses within a time frame necessary for making sound operational decisions. However, a commenter stated that existing sampling and analytical methods might not provide complete or accurate information. They requested that EPA identify suggested methods or models that can accurately estimate the ''daily transport of dispersed and non-dispersed oil'' with sufficient accuracy to inform the coordination of monitoring activities.

EPA acknowledges a commenter's concern that existing sampling and analytical methods might not provide complete or accurate information. However, the Agency believes existing sampling and analytical methods continue to improve and generally serve their intended purpose for decision-making during a response. The Agency recognizes that there may be other sampling and analytical methods used to inform other aspects of the response as a result of the oil discharge, such as those used in injury assessment that are conducted to support the NRDA process. Results from daily water column sampling conducted by the responsible party would provide input data to refine predictions of the likely dispersed oil direction using trajectory modeling. The daily reporting provisions requires the responsible party to report the estimated daily transport of dispersed and non-dispersed oil, associated volatile petroleum hydrocarbons if applicable, and dispersants, considering available technologies as described in § 300.913(c). The Agency is not including suggested methods or models to estimate the ''daily transport of dispersed and non-dispersed oil.'' Rather, the Agency is establishing a framework in which the responsible party must identify sampling and analytical methods within a DMQAPP that provides the OSC and pertinent response agencies context for the collected data. This approach allows sampling and analytical methods to continue to advance without the need to periodically modify regulatory text to reflect any such advances. Finally, for analyses that take more than 24 hours due to analytical methods, the Agency is clarifying that the responsible party report data and results if it becomes available prior to the 5-day period. Reporting results and data as soon as it becomes available avoids unnecessary delays in providing decision-makers, including relevant regulatory agencies, with timely information.

A commenter noted that the requirements for daily reporting of water sampling data in § 300.913(f) should only apply to subsea dispersant injection and are not useful for dispersant decision-making. The commenter stated that daily sampling and testing is arbitrary, overly burdensome, and unnecessary, suggesting that OSCs should have discretion in the frequency of sampling after the initial efficacy tests. Additionally, this commenter stated that the five day turnaround is unrealistic, given that it can take several days for sample transport and analysis. This commenter cited the quantity of samples and backlogs that resulted from the Deepwater Horizon response.

EPA disagrees with the comment that stated daily reporting of water sampling data is not useful to dispersant decision-making, burdensome, or unrealistic given the experiences of the Deepwater Horizon oil spill. The final monitoring provisions require daily reporting of sampling and data analyses collected within the time frame necessary to make operational decisions unless an alternate time frame is authorized by the OSC. Additionally, a schedule is required for any data analyses that require time beyond 24 hours due to analytical methods; this schedule is not to exceed five days (*i.e.,* 120 hours) unless authorized by the OSC. Timely sample analyses afford the OSC and other responders and decision makers with multiple relevant data that can be analyzed together to inform situational awareness of dispersant operations and adjust dispersant application as necessary. The Agency believes that a five-day window for analyses requiring additional time provides an adequate opportunity for the RP to arrange to conduct all requested analyses in a timely manner without being overly restrictive. The Agency believes the final rule provides flexibility for the OSC to provide an alternative time frame that is operationally relevant for

analyses that take more than 24 hours due to analytical methods.

The Agency disagrees that daily water sampling and testing is burdensome and therefore also disagrees that only the OSC should determine the sampling frequency after initial efficacy tests. The Agency believes monitoring dispersant use in the field informs the OSC and response support agencies on its overall effectiveness, including potential environmental effects and transport of dispersed oil. Daily reporting serves to ensure information is received in a timely manner. The final rule provides notification for a responsible party to identify what analytical resources will be needed ahead of time rather than wait until an incident occurs to do so. A responsible party can also arrange for a schedule to prepare, transport, process, and analyze samples as part of response planning. The Agency believes that the responsible party can identify analytical processing resources (*e.g.,* analytical laboratories) and arrange a sampling and processing schedule prior to any incident.

The Agency disagrees that daily reporting of water sampling data should apply only to subsurface dispersant injection. Daily reporting of sampling data and other relevant information equally serves to inform surface dispersant application. The daily reporting requirement for collected data and analyses is necessary to make operational decisions, including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate time frame is authorized by the OSC. While the responsible party shall provide data and results within five days, the final action provides flexibility to establish an alternate time frame authorized by the OSC for analyses that take more than 24 hours due to analytical methods.

A commenter also suggested combining the *Daily Reporting* section with the *Immediate Reporting* section and included recommended language. EPA believes keeping these sections separate more clearly identifies the specific requirements within the two different time frames.

Another commenter stated that EPA should make plans to protect worker health and public health required in ACPs along with already required plans to protect wildlife and to require daily public notification of product use, location, and quantity. The Agency notes that the NCP requires compliance with applicable worker health and safety regulations, including OSHA, under 40 CFR 300.150. Amendments to worker health and safety requirements under 40 CFR 300.150 and to Area Contingency Planning requirements under 40 CFR 300.210(c) are outside the scope of this final action on monitoring requirements. The Agency refers readers to the *Immediate Reporting* discussion where similar comments are addressed relative to public notification of dispersant-related information for further analysis of this issue.

VI. Overview of New Rule Citations

The Table below provides an overview of the new rule citations under 40 CFR part 300, subpart J, for a quick reference of the changes. New section, § 300.913, *Monitoring the Use of Dispersants,* adds regulatory requirements for monitoring certain prolonged surface and subsurface use of dispersants.

SECTION 300.913 DISTRIBUTION TABLE

§ 300.913 Monitoring the Use of Dispersants.	General Applicability.
§ 300.913(a)	Information on Dispersant Application.
§ 300.913(b)	Water Column Sampling.
§ 300.913(c)	Oil Distribution Analyses.
§ 300.913(d)	Ecological Characterization.
§ 300.913(e)	Immediate Reporting.
§ 300.913(f)	Daily Reporting.
§ 300.913(g)	Immediate and Daily Reporting to RRTs.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''*Regulatory Impact Analysis, National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Monitoring Requirements*'', is available in the docket for this action.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this final action have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2675.01 (OMB Control No. 2050–NEW). A copy of the ICR is provided in the docket for this rule and it is briefly summarized here. The monitoring provisions of the final rule include documentation of information about dispersant application; water sampling, oil distribution, and ecological characterization analysis; and, immediate and daily reporting.

For this ICR, EPA has estimated an annualized cost for monitoring oil discharges for dispersants in the range of $32,000 to $3.0 million per year. This estimated range reflects the fact that costs can vary significantly depending upon the frequency, volume, duration, and location of oil discharges. EPA based its estimates on a range of oil discharge scenarios capturing different spill sources, volumes, and monitoring durations. The annual monitoring cost also reflects EPA's estimated applicable-discharge rate of 0.2 incidents per year, or one applicable discharge every five years, based on EPA's analysis of historical discharges.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA believes that the activities required are necessary and, to the extent possible, has attempted to minimize the burden imposed. The minimum requirements specified in the final rule are intended to ensure that, when needed, product use is properly monitored in the field so that the oil discharge response is performed in a manner protective of human health and the environment.

Respondents/affected entities: Oil discharge responsible parties.

Respondent's obligation to respond: Mandatory (40 CFR part 300, subpart J).

Estimated number of respondents: 0–1 per year.

Frequency of response: 0.2 time per year.

Total estimated cost: $32,000–$3,033,000 (per year for monitoring oil discharges).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal**

Register and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities.

EPA conducted a small business analysis consistent with the Agency's 2006 small business guidance. The Agency's analysis indicates that 9,527 affected entities are small businesses in the following industries: Crude Petroleum Extraction, Natural Gas Extraction, Petroleum Refineries, Petroleum Bulk Stations and Terminals, Natural Gas Extraction, Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals), Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals), Deep Sea Freight Transportation, Coastal and Great Lakes Freight Transportation, and Pipeline Transportation of Crude Oil.

In conducting the small business analysis, the agency compared the incremental annualized compliance cost to the annual sales revenue for the smallest entities. The results indicate that if a small entity is responsible for a relatively large oil discharge, then the impact on that individual entity could be significant. However, there are important factors to consider when assessing the rule's overall effect on small businesses, including that historically, the RPs for applicable discharges are not very small entities, which constitute the vast majority of potential impacted entities in this analysis. In addition, the rarity of applicable discharges historically suggests that there will be only one entity affected by the rule (whether significantly or nonsignificantly) every five years, on average. For these reasons, EPA concludes that the final rule's requirements will not have a significant impact on a substantial number of small entities (SISNOSE). The small business analysis is available for review in the Regulatory Impact Analysis (RIA).

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This final rule imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

EPA has concluded that this action may have tribal implications because all tribes can be affected by oil spills and the subsequent use of oil spill mitigating agents, such as dispersants and bioremediation agents. However, this action will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law, similarly to the effect on states.

EPA consulted with tribal officials under EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to enable them to have meaningful and timely input into its development. The NCP is the federal government's blueprint for responding to both oil spills and hazardous substance releases. Among other provisions, Subpart J of the NCP governs environmental monitoring of dispersants and other chemical agents to respond to oil spills in jurisdictional waters. Under the NCP, tribes are included in the definition of ''State'' found in 40 CFR 300.5 except where specifically noted, and may participate as members of Area Committees, on RRTs, and on Tribal Emergency Response Commissions. See 40 CFR 300.5.

EPA's government-to-government consultation period occurred from March 11, 2015, to March 26, 2015, when EPA headquarters held five teleconference consultation events that informed tribes of the possible changes to the regulation as it was proposed in the **Federal Register**. Representatives from 10 tribes, tribal associations and organizations participated. During these calls, senior EPA staff fielded questions about the rulemaking as well as recorded comments and feedback. Tribal leaders and/or their delegated representatives raised questions about the use of dispersants and ensuring habitat and resource protection when responding to oil spills in Indian Country. EPA considered the input from these consultation calls and coordination activities, in conjunction with public comments, in the final rule development.

In addition to consultation with tribes, EPA also conducted outreach to tribes over the two years before consultation. EPA staff participated in several tribal conferences and meetings where the proposed rulemaking was discussed, and information distributed to all participating tribes. Rulemaking outreach literature promoted awareness and coordination about the proposed regulation.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule focuses on monitoring requirements to address subsurface and certain surface applications of dispersants that meet applicability criteria specified by the final rule and minimizing potential adverse impacts from their use; thus, the rule will result in greater overall environmental protection. The final rule will not cause reductions in the supply or production of oil, fuel, coal, or electricity; nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Environmental Justice (EJ)

EPA believes that this action does not have disproportionately high and

adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in Regulatory Impact Analysis (RIA) for this action. This final rule is consistent with EPA's Environmental Justice Strategy and the Office of Land and Emergency Management (OLEM) Environmental Justice Action Agenda. To address the goals of the Strategy and the Agenda, EPA conducted a qualitative analysis of the environmental justice issues under this final rule.

Historically, EPA has not found any evidence that the use of dispersant agents on oil discharges in the United States has had any disproportionate effect on any environmental justice communities. Moreover, the final rule is anticipated to improve the efficacy of dispersant application activities through monitoring requirements and thereby mitigate what could otherwise occur as adverse impacts from potentially less effective dispersant use. EPA will monitor the implementation of the rule to ensure the monitoring of dispersant agents has no disproportionate effect on any EJ communities.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 300

Environmental protection, Area contingency planning, Chemical agents, Daily reporting, Dispersants, Hazardous Substances, Intergovernmental relations, Monitoring, Natural resources, Oil pollution, Oil spills, Oil spill mitigating devices, On-scene coordinator, Quality assurance, Regional response teams, Reporting and recordkeeping requirements, Responsible party.

Dated: July 6, 2021.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Subpart J—Use of Dispersants, and Other Chemicals

■ 2. Add § 300.913 to read as follows:

§ 300.913 Monitoring the use of dispersants.

The responsible party shall monitor any subsurface use of dispersant in response to an oil discharge, any surface use of dispersant for more than 96 hours after initial application in response to an oil discharge, and any surface use of dispersant in response to oil discharges of more than 100,000 U.S. gallons occurring within a 24-hour period, and shall submit a Dispersant Monitoring Quality Assurance Project Plan (DMQAPP) covering the collection of environmental data within this section to the OSC. When any dispersant is used subsurface in response to an oil discharge, the responsible party shall implement paragraphs (a) through (g) of this section for the entire duration of the subsurface dispersant use. When any dispersant is used on the surface in response to oil discharges of greater than 100,000 U.S. gallons occurring within a 24-hour period, the responsible party shall implement paragraphs (a) through (g) of this section as soon as possible for the entire or remaining duration of surface dispersant use, as applicable. When any dispersant is used on the surface in response to an oil discharge for more than 96 hours after initial application, the responsible party shall implement paragraphs (a) through (g) of this section for the remaining duration of surface dispersant use.

(a) Document:

(1) The characteristics of the source oil.

(2) The best estimate of the oil discharge volume or flow rate, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials.

(3) The dispersant used, rationale for dispersant choice(s) including the results of any efficacy and toxicity tests specific to area or site conditions, recommended dispersant-to-oil ratio (DOR).

(4) The application method(s) and procedures, including a description of the equipment to be used, hourly application rates, capacities, and total amount of dispersant.

(5) For subsurface discharges, the best estimate of the discharge flow rate of any associated volatile petroleum hydrocarbons, periodically reevaluated as conditions dictate, including a description of the method, associated uncertainties, and materials.

(b) Collect a representative set of ambient background water column samples in areas not affected by the discharge of oil, at the closest safe distance from the discharge as determined by the OSC, and in all directions of likely oil transport considering surface and subsurface currents. Collect a representative set of baseline water column samples absent dispersant application at such depths and locations affected by the oil discharge, considering surface and subsurface currents, oil properties, and other relevant discharge conditions. On a daily basis, collect dispersed oil plume water column samples at such depths and locations where dispersed oil is likely to be present, considering surface and subsurface currents, oil properties, and other relevant discharge conditions. Collect these ambient background, baseline, and dispersed oil plume water column samples following standard operating and quality assurance procedures. Analyze the collected ambient background, baseline, and dispersed oil plume water column samples for:

(1) In-situ oil droplet size distribution, including mass or volume mean diameter for droplet sizes ranging from 2.5 to 2,000 μm, with the majority of data collected between the 2.5 and 100 μm size.

(2) In-situ fluorometry and fluorescence signatures targeted to the type of oil discharged and referenced against the source oil.

(3) Dissolved oxygen (DO) (subsurface only).

(4) Total petroleum hydrocarbons, individual resolvable constituents including volatile organic compounds, aliphatic hydrocarbons, monocyclic, polycyclic, and other aromatic hydrocarbons including alkylated homologs, and hopane and sterane biomarker compounds.

(5) Methane, if present (subsurface only).

(6) Heavy metals, including nickel and vanadium.

(7) Turbidity.

(8) Water temperature.

(9) pH.

(10) Conductivity.

(c) Considering available technologies, characterize the dispersant effectiveness and oil distribution including trajectory, accounting for the condition of oil, dispersant, and dispersed oil components from the discharge location, and describing associated uncertainties.

(d) Characterize the ecological receptors (*e.g.,* aquatic species, wildlife, and/or other biological resources) and their habitats that may be present in the discharge area and their exposure pathways. The characterization shall include, but is not limited to, those species that may be in sensitive life stages, transient or migratory species, breeding or breeding-related activities (*e.g.,* embryo and larvae development), and threatened and/or endangered species that may be exposed to the oil that is not dispersed, the dispersed oil, and the dispersant alone. The responsible party shall also estimate an acute toxicity level of concern for the dispersed oil using available dose-response information relevant to potentially exposed species following a species sensitivity distribution.

(e) Immediately report to the OSC any:

(1) Deviation of more than 10 percent from the mean hourly dispersant use rate for subsurface application, based on the dispersant volume authorized for 24 hours use, and the reason for the deviation.

(2) Ecological receptors of environmental importance, and any other ecological receptors as identified by the OSC or the Natural Resource Trustees, including any threatened or endangered species that may be exposed based on dispersed plume trajectory modeling and level of concern information.

(f) Report daily to the OSC water sampling and data analyses collected in paragraph (b) of this section and include:

(1) For each application platform, the actual amount of dispersant used for each one-hour period and the total amount of dispersant used for the previous 24-hour reporting period.

(2) All collected data and analyses of those data within a time frame necessary to make operational decisions (*e.g.,* within 24 hours of collection), including documented observations, photographs, video, and any other information related to dispersant use, unless an alternate time frame is authorized by the OSC.

(3) For analyses that take more than 24 hours due to analytical methods, provide such data and results as available but no later than five days, unless an alternate time frame is authorized by the OSC.

(4) Estimates of the daily transport of dispersed oil, non-dispersed oil, the associated volatile petroleum hydrocarbons, and dispersants, using available technology as described in paragraph (c) of this section.

(g) Report all information provided to the OSC under paragraphs (e) and (f) of this section to the applicable RRT(s).

[FR Doc. 2021–15122 Filed 7–26–21; 8:45 am]

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Part III

Department of Energy

Federal Energy Regulatory Commission
18 CFR Part 35

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM21–17–000]

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection

AGENCY: Federal Energy Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an Advance Notice of Proposed Rulemaking (ANOPR) presenting potential reforms to improve the electric regional transmission planning and cost allocation and generator interconnection processes. The Commission invites all interested persons to submit comments on the potential reforms and in response to specific questions.

DATES: Comments are due October 12, 2021 and Reply Comments are due November 9, 2021.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service only:* Addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.
  - *For delivery via any other carrier (including courier):* Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Introduction

1. Pursuant to its authority under section 206 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) is considering the potential need for reforms or revisions to existing regulations to improve the electric regional transmission planning and cost allocation and generator interconnection processes.

2. Approximately 10 years ago, the Commission issued Order No. 1000.[2] That order stated its purpose generally in its introduction:

> The reforms herein are intended to improve transmission planning processes and cost allocation mechanisms under the *pro forma* Open Access Transmission Tariff (OATT) to ensure that the rates, terms and conditions of service provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential. This Final Rule builds on Order No. 890,[3] in which the Commission, among other things, reformed the *pro forma* OATT to require each public utility transmission provider to have a coordinated, open, and transparent regional transmission planning process. After careful review of the voluminous record in this proceeding, the Commission concludes that the additional reforms adopted herein are necessary at this time to ensure that rates for Commission-jurisdictional service are just and reasonable in light of changing conditions in the industry. In addition, the Commission believes that these reforms address opportunities for undue discrimination by public utility transmission providers.[4]

3. More than a decade after Order No. 1000, we believe it appropriate to review the issues addressed by that order and other transmission-related regulations and determine whether additional reforms to the regional transmission planning and cost allocation and generator interconnection processes or revisions to existing regulations are needed to ensure rates for Commission-jurisdictional service remain just and reasonable, and not unduly discriminatory or preferential. The electricity sector is transforming as the generation fleet shifts from resources located close to population centers toward resources, including renewables, that may often be located far from load centers. The growth of new resources seeking to interconnect to the transmission system and the differing characteristics of those resources are creating new demands on the transmission system. Ensuring just and reasonable rates as the resource mix changes, while maintaining grid reliability, remains the priority in the regional transmission planning and cost allocation and generator interconnection processes.

4. In light of these evolving conditions, we believe it timely and appropriate to consider whether there should be changes in the regional transmission planning and cost allocation and generator interconnection processes and, if so, which changes are necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential and that reliability is maintained.[5] Accordingly, we will consider herein whether and which reforms and revisions are necessary to the Commission's regulations on these topics. This Advanced Notice of Proposed Rulemaking (ANOPR) discusses proposals or concepts for changes to existing processes in several broad categories: Regional transmission planning, regional cost allocation, generator interconnection funding, generator interconnection queueing processes and consumer protection, and in several instances the ANOPR also offers a potential rationale or argument for potential proposals. We note that the Commission has not predetermined that any specific proposal discussed herein shall or should be made or in what final form; rather, we seek comment from the public on these proposals and welcome commenters to offer additional or alternative proposals for consideration.

5. We believe it appropriate to review whether there are questions that should be explored and possible solutions proposed regarding any potential shortcomings in the existing regional transmission planning and cost allocation and generator interconnection processes, which may have become evident since the Commission issued Order No. 2003,[6] Order No. 890, and Order No. 1000. We seek comment on several topics across transmission planning and cost allocation and interconnection queue processes, as well as oversight of transmission infrastructure development. Examples

[1] 16 U.S.C. 824e. Section 206 requires that transmission rates be just and reasonable, and not unduly discriminatory or preferential.

[2] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132, *order on reh'g and clarification,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[3] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 118 FERC ¶ 61,119, *order on reh'g,* Order No. 890–A, 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[4] Order No. 1000, 136 FERC ¶ 61,051 at P 1.

[5] 16 U.S.C. 824e.

[6] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g,* Order No. 2003–A, 106 FERC ¶ 61,220, *order on reh'g,* Order No. 2003–B, 109 FERC ¶ 61,287 (2004), *order on reh'g,* Order No. 2003–C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007) (*NARUC* v. *FERC*).

of such questions for which we will seek comment in this ANOPR include, among others: (1) Whether the existing regional transmission planning and cost allocation processes appropriately considers the transmission needs of anticipated future generation to drive study assumptions, or instead relies on less comprehensive information, such as existing interconnection requests with completed facilities studies, and whether such current planning criteria are appropriate or should be revised; (2) whether the regional transmission planning and cost allocation processes' consideration of transmission needs driven by reliability, economic considerations, and Public Policy Requirements [7] are inappropriately siloed from one another, and, if so, whether this influences the consideration of potential benefits of a regional transmission facility (and the associated beneficiaries for purposes of allocating the costs of such a facility); [8] (3) whether criteria in addition to those related to reliability, economic, and Public Policy Requirements needs should be planned for and considered in the evaluation of benefits, and used to determine cost allocation in the regional transmission planning process, and these needs should be clear, credibly quantifiable and not speculative; (4) how to appropriately identify and allocate the costs of new transmission infrastructure in a manner that satisfies the Commission's cost-causation principle that costs are allocated to beneficiaries in a manner that is at least roughly commensurate with estimated benefits; (5) whether or not it is appropriate for the costs of state or local public policy-driven transmission facilities to be shifted through regional cost allocation to consumers in non-participating states, or whether changes to current interconnection cost allocation mechanisms may unjustly and unreasonably shift costs to customers of load serving entities; [9] (6) whether and which reforms are necessary to the generator interconnection process to ensure a more purposeful integration with the regional transmission planning and cost allocation processes, a more efficient queueing process, and a more efficient and cost-effective allocation of interconnection costs; (7) whether the regional transmission planning and cost allocation processes may have resulted in transmission facilities addressing an unduly narrow set of transmission needs, including needs located in a single transmission owner's footprint, and having limited region-wide benefits, but that, collectively, may impose significant costs on customers; (8) whether and how to better coordinate between regional and local transmission planning processes to identify more efficient or cost-effective solutions; and (9) whether it is necessary, and how, to more clearly identify the lines of regulatory authority and oversight between states and federal authorities with regard to regional and local transmission facilities to ensure appropriate vetting of transmission infrastructure. In addition, we seek comment regarding whether the current approach to oversight of transmission investment adequately protects customers, particularly given the potentially significant and very costly investments proposed to meet the transmission needs driven by a changing resource mix, and, if customers are not adequately protected from excessive costs, which potential reforms may be required and are legally permissible to ensure just and reasonable rates.

II. Background

A. Regional Transmission Planning and Cost Allocation Process

6. In 1996, the Commission issued Order No. 888 and the accompanying *pro forma* OATT, setting forth certain minimum requirements for transmission planning.[10] In 2007, the Commission issued Order No. 890 to remedy flaws in the *pro forma* OATT, and in so doing, required coordinated, open, and transparent transmission planning on both a local and regional level. Specifically, the Commission required, among other things, that each transmission provider's [11] local transmission planning process satisfy nine transmission planning principles: (1) Coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects.[12]

7. In 2011, the Commission issued Order No. 1000 to build on the transmission planning requirements of Order No. 890. Order No. 1000 included a package of reforms to ensure that the transmission planning and cost allocation mechanisms embodied in the *pro forma* OATT were adequate to support the development of more efficient or cost-effective transmission facilities.[13] The reforms in Order No. 1000 fell into the following categories: (1) Regional transmission planning; (2) transmission needs driven by Public Policy Requirements; (3) nonincumbent transmission developer reforms; (4) regional and interregional cost allocation; and (5) interregional transmission coordination. Here we provide a brief overview of the Order No. 1000 regional transmission planning requirements, nonincumbent developer reforms, regional transmission cost allocation rules, and interregional transmission coordination.

1. Regional Transmission Planning Requirements

8. Order No. 1000 requires that each transmission provider participate in a regional transmission planning process that produces a regional transmission plan.[14] Through the regional transmission planning process, transmission providers must evaluate, in consultation with stakeholders,

[7] Public Policy Requirements are requirements established by local, state, or federal laws or regulations (*i.e.,* enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level). Order No. 1000, 136 FERC ¶ 61,051 at P 2. The Commission clarified that Public Policy Requirements established by state or federal laws or regulations include duly enacted laws or regulations passed by a local governmental agency, such as a municipal or county government. Order No. 1000–A, 139 FERC ¶ 61,132 at P 319. Order No. 1000 left planning and cost allocation for Public Policy Requirements largely to the discretion of transmission providers. *See also infra* P 16.

[8] A regional transmission facility is a transmission facility located entirely in one transmission planning region. Order No. 1000, 136 FERC ¶ 61,051 at n.374.

[9] Under current Commission policy, the costs of interconnection-related network upgrades are either (1) directly assigned to the interconnection customer or (2) funded initially by the interconnection customer and reimbursed through transmission service credits.

[10] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[11] In this order, we use the term ''transmission provider'' when referring to a public utility that owns, controls, or operates transmission facilities. The term transmission provider should be read to include the transmission owner when the transmission owner is separate from the transmission provider, as is the case in regional transmission organizations (RTOs) and independent system operators (ISOs).

[12] Order No. 890, 118 FERC ¶ 61,119 at PP 418–601.

[13] Order No. 1000, 136 FERC ¶ 61,051 at PP 11–12, 42–44; Order No. 1000–A, 139 FERC ¶ 61,132 at PP 3, 4–6.

[14] Order No. 1000, 136 FERC ¶ 61,051 at PP 146, 148.

alternative transmission solutions that might meet the region's reliability, economic, and Public Policy Requirements needs [15] more efficiently or cost-effectively than solutions that transmission providers identified in their local transmission planning processes.[16] Order No. 1000 also requires that the regional transmission planning process satisfy the Order No. 890 transmission planning principles.[17] Therefore, these transmission planning principles, which the Commission adopted with respect to local transmission planning processes in Order No. 890, also apply to the regional transmission planning processes established in Order No. 1000.

2. Nonincumbent Transmission Developer Reforms

9. Order No. 1000 institutes a number of reforms that seek to ensure that nonincumbent transmission developers have an opportunity to participate in the regional transmission development process.[18] In particular, Order No. 1000 requires that each transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.[19] Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as one that has been selected because it is a more efficient or cost-effective solution to a regional transmission need.[20]

10. In addition, Order No. 1000 requires that each regional transmission planning process include not unduly discriminatory qualification criteria and information requirements for transmission developers that want to propose a transmission facility for selection in the regional transmission plan for purposes of cost allocation.[21] The regional transmission planning process must also have a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.[22] Furthermore, the regional transmission planning process must provide a nonincumbent transmission developer with the same eligibility as an incumbent transmission developer to use a cost allocation method(s) for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.[23]

3. Regional Transmission Cost Allocation

11. Order No. 1000 requires each transmission provider to have in place a method, or set of methods, for allocating the costs of new regional transmission facilities selected in the regional transmission plan for purposes of cost allocation.[24] Each regional cost allocation method must satisfy six regional cost allocation principles,[25] including the principle that the cost of transmission facilities must be allocated to those in the transmission planning region that benefit from the facilities in a manner that is roughly commensurate with estimated benefits.[26]

4. Interregional Transmission Coordination

12. Order No. 1000 requires each transmission provider, through its regional transmission planning process, to establish further procedures with each of its neighboring transmission planning regions for the purpose of coordinating and sharing the results of respective regional transmission plans to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities. The interregional coordination processes must provide for: (1) The sharing of information regarding the respective needs of each region and potential solutions to those needs; and (2) the identification and evaluation of interregional transmission facilities that may be more efficient or cost-effective solutions to those regional needs.[27]

B. Overview of Transmission Planning

13. The next few paragraphs provide an overview of how transmission providers plan their systems to meet their reliability, economic, and Public Policy Requirements needs, consistent with Order Nos. 890 and 1000.

1. Reliability Needs

14. Transmission providers within transmission planning regions conduct reliability planning studies to help ensure the ability of the transmission system to serve firm transmission use. These studies may extend 10 to 15 years into the future depending on the transmission planning region's transmission planning process and tests for violations of established North American Electric Reliability Corporation (NERC) reliability requirements.[28] Additional regional and local reliability criteria may also apply in specific transmission planning regions. In order to meet applicable reliability planning criteria, the regional transmission planning process focuses on studying and producing a transmission system that is robust enough to be able to withstand a range of probable contingencies (*e.g.,* the sudden loss of a generator or high voltage transmission line) while reliably serving customer demand and preventing cascading outages.[29] Generally, transmission providers identify areas not in compliance with planning criteria and develop plans to achieve compliance. Transmission providers examine facilities to mitigate identified reliability criteria violations for their feasibility, impact, and comparative costs, culminating in a recommended regional transmission plan.

2. Economic Needs

15. Transmission providers within transmission planning regions also plan transmission facilities to meet economic needs. In Order No. 1000, the Commission recognized that Order No. 890 placed no affirmative obligation on

[15] Order No. 1000's requirement to consider transmission needs driven by Public Policy Requirements is described below.

[16] Order No. 1000, 136 FERC ¶ 61,051 at PP 11, 148.

[17] *Id.* P 151. Order No. 890 explains these transmission planning principles.

[18] For purposes of Order No. 1000, ''nonincumbent transmission developer'' refers to two categories of transmission developer: (1) A transmission developer that does not have a retail distribution service territory or footprint; and (2) a transmission provider that proposes a transmission facility outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project. *Id.* P 225.

[19] *Id.* P 313.

[20] *Id.* PP 5, 63.

[21] *Id.* PP 225, 323, 325.

[22] *Id.* P 328; Order No. 1000–A, 139 FERC ¶ 61,132 at P 452.

[23] Order No. 1000, 136 FERC ¶ 61,051 at P 332.

[24] *Id.* P 558.

[25] *Id.* P 603.

[26] *Id.* PP 622, 639.

[27] *Id.* P 396.

[28] For example, Reliability Standard TPL–001–4 requires that Transmission Planners conduct an annual planning assessment of their region's portion of the bulk electric system and document summarized results of the steady state analyses, short circuit analyses, and stability analyses. TPL–001–4 also requires that Transmission Planners conduct these analyses using a model of their systems operating under a wide variety of potential conditions to see under what, if any, conditions the system will fail to meet reliability criteria. TPL–001–4 lays out the variety of these conditions, including system peak, off-peak, single contingency, multiple contingencies (both sequential and simultaneous), severe contingencies on adjacent systems, sensitivity analyses to underlying model assumptions, and extreme events.

[29] The regional transmission planning process will identify the necessary transmission system facilities (which have varying costs and lead times for when they can be placed into service) that are needed to achieve reliable transmission system operations.

transmission providers to perform economic planning studies absent a request by stakeholders. To remedy this deficiency, Order No. 1000 required that, in addition to economic planning studies requested by stakeholders, transmission providers evaluate, through a regional transmission planning process and in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual transmission providers in their local transmission planning process. These regional transmission solutions could include transmission facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by Public Policy Requirements.[30] As Order No. 890 explains, the purpose of economic transmission planning is to plan transmission to alleviate congestion through the integration of new generation resources or an expansion of the regional transmission system, by an amount that justifies its cost, usually by a defined threshold.[31] However, to implement the requirement in Order No. 1000 to affirmatively plan for economic needs, transmission providers implemented thresholds that vary across the regions. Examples of regional transmission facilities driven by economic needs include transmission facilities that relieve historical or projected transmission congestion and allow lower-cost power to flow to consumers.

3. Public Policy Requirement Needs

16. Order No. 1000 requires transmission providers to consider transmission needs driven by Public Policy Requirements in their local and regional transmission planning processes.[32] However, the requirement in Order No. 1000 to consider transmission needs driven by Public Policy Requirements is limited, and the Commission provided transmission providers with flexibility in how to meet the requirement. For example, Order No. 1000 does not require that a separate class of transmission facilities be created in the regional transmission planning process to address transmission needs driven by Public Policy Requirements,[33] nor does it mandate the consideration of any particular transmission need driven by a Public Policy Requirement.[34] As a result, the process for identifying and considering such needs varies from transmission planning region to transmission planning region.

4. Local Transmission Facilities in the Regional Transmission Planning Process

17. Generally, the transmission facilities that transmission providers include in their individual local transmission plans are incorporated into regional transmission plans as inputs, with minimal opportunity for stakeholder review in the regional transmission planning process. That is because the analysis of local transmission plans in the regional transmission planning process is limited mainly to a reliability analysis to ensure that local transmission plans do not negatively affect the reliability of the regional transmission system.

C. Overview of Generator Interconnection

18. In Order No. 2003, the Commission recognized a need for a single set of interconnection procedures for jurisdictional transmission providers and a single, uniformly applicable interconnection agreement for large generators.[35] The Commission explained that generator interconnection is a ''critical component of open access transmission service and thus is subject to the requirement that utilities offer comparable service under the OATT.'' [36] The Commission also determined that, because of the inefficiency of addressing generator interconnection issues on a case-by-case basis,[37] it was appropriate to establish a standard set of generator interconnection procedures to ''minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.'' [38] To this end, the Commission adopted the *pro forma* Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA) [39] and required that all transmission providers' OATTs incorporate the *pro forma* LGIP and *pro forma* LGIA.

19. In Order No. 2003, the Commission also retained a distinction between interconnection facilities, which are located between the interconnection customer's generating facility and the transmission provider's transmission system, and network upgrades,[40] which include only facilities at or beyond the point where the interconnection customer's generating facility interconnects to the transmission provider's transmission system.[41] This distinction is important because the determination of which entity is ultimately responsible for the cost of a facility can depend on whether that facility is an interconnection facility or an interconnection-related network upgrade.

20. To initiate the generator interconnection process set forth in Order No. 2003,[42] the interconnection customer submits an interconnection request associated with its proposed generating facility that includes preliminary site documentation, certain technical information about the proposed generating facility, and the expected in-service date along with a deposit.[43] The transmission provider uses this information to determine the interconnection facilities and interconnection-related network upgrades necessary to accommodate the interconnection request and their associated costs.[44]

21. After the transmission provider determines that the interconnection request is complete, the interconnection request will enter the interconnection queue with other pending requests, and the transmission provider will assign the request a queue position based on the date and time of receipt. The queue position will determine the order in which the transmission provider will perform three phases of interconnection studies for the interconnection request. The three phases in order are: (1) The feasibility study; (2) the system impact

[30] Order No. 1000, 136 FERC ¶ 61,051 at PP 147–148.

[31] Order No. 890, 118 FERC ¶ 61,119 at P 549.

[32] Order No. 1000, 136 FERC ¶ 61,051 at PP 203, 222; Order No. 1000–A, 139 FERC ¶ 61,132 at P 208.

[33] Order No. 1000, 136 FERC ¶ 61,051 at P 220 (explaining that the Final Rule is intended to ''provide flexibility for public utility transmission providers to develop procedures appropriate for their local and regional transmission planning processes'').

[34] *Id.* P 215.

[35] Order No. 2003, 104 FERC ¶ 61,103 at P 11.

[36] *Id.* P 9 (citing *Tenn. Power Co.,* 90 FERC ¶ 61,238 (2000)).

[37] *Id.* P 10.

[38] *Id.* P 11.

[39] The *pro forma* LGIP and *pro forma* LGIA govern large generating facilities, which are generating facilities that have a generating facility capacity of more than 20 MW.

[40] For clarity, this ANOPR will refer to these facilities as interconnection-related network upgrades.

[41] *Id.* P 21.

[42] While we provide a broad description of the generator interconnection process under Order No. 2003 as background here, we recognize that many transmission providers have adopted (and the Commission has accepted) variations to many of the terms in the *pro forma* LGIP and the *pro forma* LGIA. Consequently, some or many of the details of a particular transmission provider's generator interconnection process may vary considerably from the broad description provided here.

[43] *Id.* P 35.

[44] *Pro forma* LGIP Section 3.1.

study; and (3) the facilities study, all of which are necessary to determine the interconnection facilities and interconnection-related network upgrades needed to accommodate the interconnection request and the interconnection customer's cost responsibility for these facilities.[45]

22. At the completion of the facilities study, the transmission provider will issue a report, which includes a ''best estimate of the costs to effect the requested interconnection,'' and provide a draft generator interconnection agreement to the interconnection customer.[46] If the interconnection customer wishes to proceed, after negotiations, the interconnection customer enters into a generator interconnection agreement with the transmission provider or requests that the transmission provider file the agreement with the Commission unexecuted.[47]

D. Interaction Between the Regional Transmission Planning and Cost Allocation and Generator Interconnection Processes

23. The interaction between a transmission provider's current generator interconnection process and its regional transmission planning and cost allocation processes appears to be limited. The primary interaction is that the baseline regional transmission planning models generally only incorporate interconnection projects that are near the end of the interconnection process and have completed a facilities study. In addition, when creating interconnection study models, transmission providers incorporate transmission planning information into the interconnection base cases, but what information is incorporated varies for each transmission provider. The base cases for interconnection studies impact the cost assignment for interconnection customers, often dramatically, and at present, most transmission providers' OATTs do not contain requirements for what information is included in base cases.[48]

E. Current Funding Paradigm

1. Regional Transmission Cost Allocation

24. As noted above, Order No. 1000's cost allocation reforms require each transmission provider to participate in a regional transmission planning process that features a regional cost allocation method or methods for allocating the cost of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. The Commission also required that such regional cost allocation methods satisfy six regional cost allocation principles, including the principle that the cost of transmission facilities must be allocated to those in the transmission planning region that benefit from the facilities in a manner that is roughly commensurate with estimated benefits.[49]

2. Local Transmission Facilities

25. In Order No. 1000, the Commission explained that the local transmission planning process is the transmission planning process that a transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890.[50] The outcome of the local transmission planning processes are local transmission facilities. In Order No. 1000, the Commission defined a local transmission facility as a transmission facility located solely within a transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.[51]

26. The Commission clarified that, if the transmission provider has a retail distribution service territory and/or footprint, then only a transmission facility that it decides to build within that retail distribution service territory or footprint, and that is not selected in a regional transmission plan for purposes of cost allocation, may be considered a local transmission facility. Further, the Commission explained that, in the case of an RTO/ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owing members.[52] The Commission did not require that the transmission facilities in a transmission provider's local transmission plan be subject to approval at the regional or interregional level, unless that transmission provider seeks to have any of those facilities selected in the regional transmission plan for purposes of cost allocation.[53]

27. Moreover, local transmission facilities planned through a local transmission planning process are not eligible to use the Order No. 1000 regional cost allocation method and instead their costs are allocated to the transmission provider in whose retail distribution service territory or footprint the local transmission facility is located. In support of this, the Commission explained that it continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint as long as the transmission provider does not receive regional cost allocation for the facilities.[54] Further, the Commission clarified that nothing in Order No. 1000 restricts an incumbent transmission provider from developing a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own retail distribution service territory or footprint.[55]

3. Interconnection-Related Network Upgrades

28. The Commission's interconnection pricing policy[56] allows for two general approaches on how to assign the cost of interconnection-related network upgrades, one of which we refer to as the crediting policy and the other as participant funding. We will discuss the rationale that the Commission provided when accepting each of the two approaches in later sections.

29. In Order No. 2003, the Commission established the crediting policy as a requirement of the Commission's interconnection pricing policy. Pursuant to the crediting policy, the interconnection customer is solely responsible for the costs of interconnection facilities, and interconnection-related network upgrades are funded initially by the

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[45] Order No. 2003, 104 FERC ¶ 61,103 at PP 35–36. The interconnection customer is responsible for the costs of interconnection studies and any necessary restudies.

[46] *Id.* P 38.

[47] *Id.*

[48] For example, some transmission providers have details regarding what information is included in an interconnection study base case in their tariffs, *see e.g. Sw. Power Pool, Inc.,* 172 FERC ¶ 61,283, at P10 (2020), while others limit that information to the business practices manuals. *See, e.g.,* NYISO Manual 26, Reliability Planning Process Manual at 15–16.

[49] Order No. 1000, 136 FERC ¶ 61,051 at PP 622, 639. The six Order No. 1000 regional cost allocation principles are discussed further below.

[50] *Id.* P 68.

[51] *Id.* P 63.

[52] Order No. 1000–A, 139 FERC ¶ 61,132 at P 429.

[53] *Id.* P 190.

[54] *Id.* PP 366, 379, 425, 428.

[55] Order No. 1000, 136 FERC ¶ 61,051 at P 329.

[56] We use the term interconnection pricing policy to refer collectively to both Order No. 2003's establishment of the crediting policy for financing interconnection-related network upgrades and Order No. 2003's allowance of participant funding for interconnection-related network upgrades in RTOs/ISOs.

interconnection customer (unless the transmission provider elects to fund them) and the transmission provider reimburses the interconnection customer through transmission service credits.[57] The Commission reasoned that ''it is appropriate for the Interconnection Customer to pay initially the full cost of Interconnection Facilities and [interconnection-related] Network Upgrades that would not be needed but for the interconnection.'' [58] While the interconnection customer pays for the costs of the interconnection-related network upgrades upfront, the transmission provider must reimburse the total amount that the interconnection customer paid for interconnection-related network upgrades, plus interest, as credits against the charges for transmission service taken with respect to the interconnection customer's generating facility as such charges are incurred. The transmission provider recovers the cost of interconnection-related network upgrades funded under the crediting policy through its embedded cost transmission rates.[59] The second pricing approach for interconnection-related network upgrades is called participant funding. Participant funding for interconnection-related network upgrades refers to the direct assignment to a particular interconnection customer of the costs of interconnection-related network upgrades that would not be needed but for the interconnection.[60] The Commission has accepted as just and reasonable various participant funding approaches proposed by RTOs/ISOs as independent entity variations from the *pro forma* requirements of Order No. 2003.

[57] Order No. 2003, 104 FERC ¶ 61,103 at P 22.

[58] *Id.* P 694. ''But for'' interconnection-related network upgrades are those interconnection-related network upgrades that would not have been constructed ''but for'' the interconnection request. *See N.Y. Indep. Sys. Operator, Inc.,* 122 FERC ¶ 61,267, at n.3 (2008).

[59] The embedded cost pricing ''attempts to allocate costs among customers based upon usage.'' *Fla. Power & Light Co.,* 70 FERC ¶ 61,158 (1995). Embedded cost rates reflect ''system average costs *including* the cost of the [interconnection-related] network upgrades, and incremental cost rates ''reflect [ ] *just* the cost of the [interconnection-related] network upgrades.'' *See Interstate Power & Light Co.* v. *ITC Midwest, LLC,* 144 FERC ¶ 61,052, at P 36 (2013) (emphasis added).

[60] Order No. 845–B, 166 FERC ¶ 61,092 at P 5; *see also* Order No. 2003, 104 FERC ¶ 61,103 at P 679 (pursuant to a ''policy of participant funding . . . those [that] benefit from a particular project pay for it'').

III. The Potential Need for Reform

A. The Existing Regional Transmission Planning and Cost Allocation and Generator Interconnection Processes May Be Inadequate To Ensure Just and Reasonable Rates

30. As a result of changing circumstances since the Commission issued Order Nos. 890, 1000, and 2003, we believe it is now appropriate to examine whether the existing regional transmission planning and cost allocation and generator interconnection processes adequately account for the transmission needs of the changing resource mix, or whether reforms may be necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential.

1. Considering Anticipated Future Generation

31. Expansion of the transmission system generally occurs by design through a transmission provider's transmission planning processes, or ad hoc through its generator interconnection process. At present, it appears that regional transmission planning processes may not adequately model future scenarios to ensure that those scenarios incorporate sufficiently long-term and comprehensive forecasts of future transmission needs, including considering the needs of anticipated future generation in identifying needed transmission facilities. Although regional transmission planning processes may include some level of generation development in different future scenarios analyses, it appears that they tend to include in their baseline reliability models only those generators that have completed facilities studies, and thus are far along in the generator interconnection process. These baseline reliability models, by relying only on generators that have completed facilities studies, may only account for generation that will come online in the short term.

32. As a result, the generator interconnection process appears to be the principal means by which infrastructure is built to accommodate new generators. That process, however, focuses on a single interconnection request (or cluster of requests). In other words, the generator interconnection process is not designed to consider how to address anything beyond the reliability interconnection-related network upgrades required for a specific interconnection request or group of interconnection requests.

33. New transmission facilities often have a development lead time that exceeds the interconnection timing needs of those interconnection customers already in the queue. It appears that these types of transmission facilities may not currently be planned and built in advance to meet the needs of anticipated future generation and as a result, interconnection customers are assigned the costs to construct large, high-voltage transmission facilities.

34. In addition, because transmission planning processes generally do not plan for the needs of anticipated future generation, transmission infrastructure that is being developed in order to facilitate new generation is constructed largely through the generator interconnection process, which is unlikely to result in the economies of scale that could more efficiently or cost-effectively meet the needs of the changing resource mix.

35. Likewise, the existing generator interconnection process appears to focus on the limited set of facilities needed to reliably interconnect a single interconnection customer (or cluster of requests) at the interconnection service level that the interconnection customer requests. The generator interconnection process may not adequately consider whether it may be more efficient or cost-effective to consider the interconnection-related network upgrades needed for multiple anticipated future generators that are not in the same cluster or are not yet in the interconnection queue in areas that have abundant wind or solar attributes that could support multiple future generators.[61]

36. In addition, there may be a need for coordination between the regional transmission planning process and the generator interconnection process, the absence of which may result in inefficient investment in transmission infrastructure and ultimately unjust and unreasonable or unduly discriminatory or preferential rates. By considering the transmission needs of anticipated future generation in its regional transmission planning and cost allocation processes, a transmission provider may identify transmission facilities that could facilitate both the interconnection of new generation as well as address other identified transmission system needs—such as mitigating a reliability violation or reducing congestion—at a lower total cost than pursuing two separate transmission projects through the

[61] We note that certain regions do have the ability to share costs of network upgrades with future generation, but this is generally limited to the short term. For example, Midcontinent Independent System Operator, Inc.'s (MISO's) Shared Network Upgrade construct allows interconnection customers to be repaid for portions of an interconnection-related network upgrade's cost if another interconnection customer uses that network upgrade within five years.

generator interconnection and regional transmission planning and cost allocation processes. Without co-optimization of the two processes, however, there appears to be no system in place to jointly assess the benefits and allocate the costs of transmission facilities that yield benefits to both system loads and new generation.

2. Results of Existing Local and Regional Transmission Planning Processes

37. We seek to better understand whether the current transmission planning processes may be resulting increasingly in transmission facilities addressing a narrow set of transmission needs, often located in a single transmission owner's footprint. To the extent that the requirements of the regional transmission planning process result in transmission providers expanding predominately local transmission facilities, that process may fail to identify more efficient or cost-effective transmission facilities needed to accommodate anticipated future generation. We seek to better understand how the reforms of the federal right of first refusal in Order No. 1000 have shaped the type and characteristics of transmission facilities developed through regional and local transmission planning processes, such as a relative increase in investment in local transmission facilities or the diversity of projects resulting from competitive bidding processes.

3. Cost Responsibility for Transmission Facilities and Interconnection-Related Network Upgrades

38. The Commission cannot ensure just and reasonable rates without considering how to allocate the costs of transmission facilities and interconnection-related network upgrades that result from the regional transmission planning and cost allocation and generator interconnection processes to the entities that benefit from those facilities. As the Commission explained in Order No. 1000, the costs of transmission infrastructure must be allocated to its beneficiaries in a manner that is at least roughly commensurate with the benefits that they draw from those facilities.[62] We seek to better understand whether the current approach to allocating the costs of transmission infrastructure, including transmission facilities developed through the regional transmission planning and cost allocation processes and interconnection-related network upgrades planned through the generator interconnection process, continues to appropriately allocate the costs of those transmission facilities to the entities that ultimately benefit from them.

39. The current regional transmission planning process considers transmission needs driven by reliability, economics, and Public Policy Requirements. We seek comment whether, by separating transmission facilities into types, transmission planning processes may fail to take into account the benefits of multi-faceted projects for the purposes of cost allocation.

40. The current approach to allocating the costs of interconnection-related network upgrades may fail to allocate costs in a manner that is roughly commensurate with benefits. As discussed above, the generator interconnection process identifies the interconnection facilities and interconnection-related network upgrades needed to interconnect a single interconnection request (or cluster of requests). Under the participant funding approach to financing the cost of interconnection-related network upgrades, the interconnection customer pays for the costs of such upgrades, even where they would provide benefits to other customers such as resolving congestion on the transmission system. At the time that the Commission issued Order No. 2003, it was less likely that interconnection customers would be assigned significant interconnection-related network upgrades through the interconnection study process. Now, however, there is little remaining existing interconnection capacity on the transmission system, particularly in areas with high degrees of renewable resources that may require new resources to fund interconnection-related network upgrades that are more extensive and, as a result, more expensive. The more significant the interconnection-related network upgrades needed to accommodate a new resource, the greater the potential that such upgrades may benefit more than just the interconnection customer. Where an interconnection customer elects not to pursue a generating facility with system-wide benefits that exceeds such facility's cost, net beneficial infrastructure would not be developed, potentially leaving a wide range of customers worse off as a result.

41. We also note that the cost of interconnection-related network upgrades can depend entirely on both the timing of when and the specific site where the interconnection customer enters the interconnection queue that may result in interconnection customers submitting multiple speculative interconnection requests in an effort to receive a favorable queue position and reduce their interconnection-related network upgrade costs.[63] When interconnection customers ''test the waters'' in this manner, it may lead to late-stage withdrawals of the excess interconnection requests that can then impede the transmission provider's ability to process its interconnection queue in an efficient manner. Because of the changing interconnection landscape since Order No. 2003, the Commission's interconnection pricing policy, and in particular participant funding, now may result in a situation where interconnection customers have a financial incentive to submit multiple speculative projects. As a result, we believe it may be time to reexamine the rationale behind the Commission's pricing policy established for interconnection-related network upgrades and to consider reforms to generator interconnection processes that would make such processes more efficient, less costly, and ensure that generation projects that are more ''ready'' than others are not unduly delayed in the queue. In consideration of generator interconnection process reforms, we remain mindful of the need to ensure that interconnection costs are not unjustly and unreasonably shifted to customers of load-serving entities.

42. While a reassessment of Order No. 2003's assumptions pertaining to the Commission's interconnection pricing policy may be necessary, our focus is in line with Order No. 2003's finding that ''relatively unencumbered entry into the market is necessary for competitive markets.'' [64] Furthermore, the purpose of this examination is also consistent with the original objectives of Order No. 2003, namely to ''limit opportunities for Transmission Providers to favor their owner generation'' and to ''facilitate market entry for generation competitors by reducing interconnection costs and time.'' [65] At the same time, there is reason to question the contention in Order No. 2003 that participant funding provides more ''efficient price signals and a more equitable allocation of costs than the crediting approach.'' [66] Also, while the crediting policy ''recognizes the reliability benefits of a stronger

[62] Order No. 1000, 136 FERC ¶ 61,051 at P 10.

[63] *See, e.g., Review of Generator Interconnection Agreements and Procedures,* Technical Conference Transcript, Docket No. RM16–12–000, at Tr. 211:10–21 (May 13, 2016) (Steve Naumann, Exelon Corporation) (filed Aug. 23, 2016) (''We would look at putting let's say new gas fired generation in PJM, it may have four queue positions. And we only intend to go through with one, that's not speculation, that's trying to get information on which is the most viable.'').

[64] Order No. 2003, 104 FERC ¶ 61,103 at P 11.

[65] *Id.* P 12.

[66] *Id.* P 695.

transmission infrastructure and more competitive power markets that result from a policy that facilitates the interconnection of new generating facilities,'' [67] we raise questions on whether there are improvements that can be made to the crediting policy or whether a different pricing policy may be more efficient.

43. We note that ensuring just and reasonable rates, while maintaining grid reliability, remain the priorities for regional transmission planning, and cost allocation processes, and generator interconnection processes, and any comments proposing revisions to existing regulations should address their impact on reliability and costs to customers. All proposed reforms or revisions to regulations proposed in this proceeding must be consistent with the Commission's authority under section 206 of the FPA.

IV. Consideration of Potential Reforms and Request for Comment

A. Regional Transmission Planning and Cost Allocation Processes

1. Potential Reforms and Request for Comment

a. Planning for the Transmission Needs of Anticipated Future Generation

44. We seek comment regarding whether transmission providers in each transmission planning region should amend the regional transmission planning and cost allocation processes to plan for the transmission needs of anticipated future generation to meet a changing resource mix, including generation that is not yet in the interconnection queue. We seek comment on whether the existing regional transmission planning and cost allocation processes fail to adequately account for anticipated future generation. We also seek comment on whether the possible failure to account for anticipated future generation results in inefficient investment in transmission infrastructure and causes customers to pay unjust and unreasonable rates for transmission service. We also seek comment on whether, and, if so, how the Commission could structure and implement a framework for considering the transmission needs of anticipated future generation in the regional transmission planning and cost allocation processes. Commenters should address how each suggested reform or revision to existing rules is consistent with the Commission's authority under the FPA.

45. Below, we describe potential changes to the regional transmission planning and cost allocation processes that may be components of a process that plans for transmission needs associated with anticipated future generation. We seek comment on each of these potential changes, including whether and, if so, how the potential changes may lead to identification of more efficient or cost-effective transmission solutions to meet the needs of anticipated future generation. We also seek comment on whether there exist other potential revisions that could improve regional transmission planning and cost allocation for anticipated future generation, either as alternatives to potential reforms discussed herein or as supplementary reforms.

i. Future Scenarios and Modeling Anticipated Future Generation

46. We seek comment on whether reforms are needed regarding how the regional transmission planning and cost allocation processes model future scenarios to ensure that those scenarios incorporate sufficiently long-term and comprehensive forecasts of future transmission needs. We seek comment on what factors shaping the generation mix are appropriate to use for transmission planning purposes, such as, for example: (1) Federal, state, and local climate and clean energy laws and regulations; (2) federal, state, and local climate and clean energy goals that have not been enshrined into law; (3) utility and corporate energy and climate goals; (4) trends in technology costs within and outside of the electricity supply industry, including shifts toward electrification of buildings and transportation; and (5) resource retirements. With regard to each factor that may be considered for inclusion in scenario modeling, we seek comment on the source of the Commission's authority to incorporate that factor in the regional transmission planning and cost allocation processes. In addition, we seek comment on whether the Commission should establish minimum requirements regarding future scenarios for transmission providers to use in their regional transmission planning, including modeling anticipated future generation in those scenarios. Commenters should also address whether and how any reforms or revisions to existing rules could unjustly and unreasonably shift additional costs to customers of load serving entities. Commenters should also address whether the status quo does or does not allocate costs in a manner roughly commensurate with benefits, and whether the status quo leads to rates that are unjust or unreasonable.

47. The current regional transmission planning and cost allocation processes vary regarding how far into the future transmission providers look when evaluating transmission needs driven by reliability, economic considerations, or Public Policy Requirements. In general, however, the extent to which regional transmission planning processes plan for anticipated future generation is often limited to generation in the generator interconnection queue with a completed facilities study, which represents a relatively short-term outlook, and therefore may under-forecast anticipated future generation on a longer-term basis (and the associated transmission needs of that anticipated future generation). As noted, planning and developing the transmission facilities needed to address more efficiently or cost-effectively the transmission needs of a changing resource mix will often take considerably longer than the typical development timeline of a generating facility that has completed a facilities study and by considering such a limited subset of generation resources, more cost-effective transmission facilities that address longer-term needs may never be developed.

48. In light of the above, we seek comment on whether, and if so, how the regional transmission planning process should be restructured to consider a longer-term outlook. We seek comment on whether developing plausible long-term scenarios would lead to the identification of more efficient or cost-effective transmission solutions in regional transmission plans, whether building transmission facilities to accommodate anticipated future generation is required to render rates just and reasonable, and whether there are deficiencies in existing regional transmission planning and cost allocation processes that would be cured by conducting such future scenarios planning. Specifically, we seek comment on whether the development of longer-term scenarios for planning purposes should be pursued and, if so: (1) The number of years into the future the scenarios should consider (including an explanation of how far ahead it is reasonable to forecast anticipated future generation and system requirements); (2) the inputs that should be considered in modeling anticipated future generation; (3) different transmission planning methods, including whether consideration should be given to multiple future scenarios, as well as how the planning process should consider the probabilities of future

[67] Order No. 2003–A, 106 FERC ¶ 61,220 at P 584.

scenarios; (4) whether and how transmission providers should account for an array of different future scenarios when identifying more efficient or cost-effective transmission solutions in regional transmission plans; (5) whether and how transmission providers should account for federal, state, local, and individual utility energy and climate goals (including federal, state and local laws and regulations, as well as other policies or goals), and the source of the Commission's authority to account for such laws, regulations, policies and goals; (6) whether and how transmission providers should plan for expected future generator retirements; (7) whether and how Grid-Enhancing Technologies [68] should be accounted for in determining what transmission is needed under such scenarios; (8) how benefits and costs of transmission infrastructure should be accounted for in such models, including how adjusted production costs should be calculated; (9) any other aspects of future scenarios modeling, including planning for anticipated future generation and associated transmission needs that would be useful for the Commission to consider.

49. In addition, we seek comment on whether greater use of probabilistic transmission planning approaches may better assess the benefits of regional transmission facilities. While some transmission providers consider a small number of future scenarios as part of their transmission planning process, more advanced approaches, such as stochastic [69] techniques, may provide an opportunity to consider a broader array of potential future conditions. Accordingly, we seek comment on potential benefits and drawbacks of such techniques in regional transmission planning assessments, including whether these or other new approaches may facilitate the co-optimization of generation siting and transmission development, whether such methods capture savings in generation capital costs as well as production expenses that can be realized from transmission additions, and whether implementing such methods is required to render rates just and reasonable.

50. We also seek comment on which inputs and assumptions transmission providers would need to model to represent new generation sources, such as renewable resources, in order to reflect their actual performance, such as active power-frequency control, reactive power-voltage control, and fault ride-through capabilities, in the planning study cases and any additional studies in order to ensure that transmission planning solutions result in operating reliability for the future.

51. We seek comment on the extent to which anticipated generation and transmission facility retirements are reflected in future scenarios modeled by transmission providers, and whether modifications to regional market rules and coordination processes between local and regional plans could facilitate more accurate regional transmission plans that reflect such anticipated retirements.

52. In addition, should the use of certain long-term scenarios be shown appropriate as part of ensuring just and reasonable rates, we seek comment on whether and how the Commission should ensure that the regional transmission planning and cost allocation processes develop a sufficiently wide range of future scenarios. We seek comment on whether the Commission should consider principles or minimum requirements as a basis for establishing such scenarios. Given that states or other local governing bodies may be uniquely situated in determining how much anticipated future generation is needed, or in providing information related to infrastructure siting or resource mix as influenced by state and local policies, we seek comment on how their input should be reflected by transmission providers in developing a sufficiently wide range of future scenarios, including those for anticipated future generation, and the more efficient or cost-effective transmission facilities that may be necessary to facilitate those future scenarios. We seek comment on whether it is necessary to require transmission providers to modify the regional transmission planning and cost allocation processes, such as requiring additional stakeholder input, to develop future scenarios, including those for anticipated future generation, such that there are sufficient opportunities for stakeholders to assess the reasonableness of the results, as well as for future modifications to the planning process.

53. Finally, we seek comment on whether and how such long-term scenarios should be used in identifying and selecting solutions to meet future transmission needs. For example, as discussed below, should transmission providers focus on a broader set of benefits for transmission facilities and a portfolio of transmission facilities in identifying the more efficient or cost-effective transmission solutions? If so, how should regional planning processes determine the right set of benefits to factor into such an evaluation? Is maximizing net benefits an appropriate criterion to use to identify efficient and cost-effective transmission solutions? Should the willingness of some beneficiaries to pay for certain transmission infrastructure, for example utilities or corporations with renewable resource or zero carbon goals, be considered in determining whether to include the benefits within a broader set of benefits from transmission facilities, and if so then how? Is there a need to establish a minimum set of transmission facility benefits that transmission providers must incorporate into regional transmission planning decisions, and if so, is there also a need to regularly update the minimum set of transmission facility benefits?

ii. Identifying Geographic Zones That Have Potential for High Amounts of Renewable Resource Development To Meet Increased Demand

54. We seek comment on whether the Commission should require transmission providers in each transmission planning region to establish, as part of their regional transmission planning and cost allocation processes, a process to identify geographic zones that have the potential for the development of large amounts of renewable generation and plan transmission to facilitate the integration of renewable resources in those zones.

55. Examples of transmission planning and development initiatives that have identified geographic zones with the potential for the development of significant amounts of renewable resources and transmission to facilitate the integration of renewable resources in those zones include the Public Utility Commission of Texas's (Texas Commission) Competitive Renewable Energy Zones (CREZ) initiative [70] and MISO's Multi-Value Projects (MVP).[71]

56. California Independent System Operator Corporation (CAISO) offers another example of a regional transmission planning process identifying transmission facilities to accommodate renewable resources in

[68] Grid Enhancing Technologies increase the capacity, efficiency, or reliability of transmission facilities. These technologies include, but are not limited to: (1) Power flow control and transmission switching equipment; (2) storage technologies, and (3) advanced line rating management technologies. FERC, *Grid Enhancing Technologies,* Notice of Workshop, Docket No. AD19–9–000 (Sept. 9, 2019).

[69] Stochastic models are frameworks for addressing optimization problems that involve uncertainty.

[70] *http://www.ercot.com/committee/crez.*

[71] *https://www.misoenergy.org/planning/planning/multi-value-projects-mvps/.*

geographic zones that have the potential for high amounts of renewable resources. In a petition for declaratory order, the Commission approved a mechanism to facilitate the financing and development of transmission facilities to interconnect multiple resources that met CAISO's eligibility requirements, including a high voltage level and providing access to areas rich in renewable energy.[72]

57. We seek comment on whether the Commission should require transmission providers in each transmission planning region to establish, as part of their regional transmission planning and cost allocation processes, a process that identifies geographic zones that have the potential for the development of large amounts of new generation, particularly renewable resources. We seek comment on whether and how such a process might interrelate with existing regional transmission planning and cost allocation processes within each region, and how long-term scenario planning discussed above may be used in this process or other relevant regional transmission planning and cost allocation processes. In addition, we seek comment on whether reforms to the current interregional transmission coordination process are needed or appropriate for making an approach along these lines effective. We also seek comment on: (1) How the Commission should structure this potential requirement; and (2) any potential best practices, analyses, models, and metrics that could be used to identify such zones, including the amount and type of potential generation that could be located there. As with the future scenarios transmission planning discussed above, we seek comment on whether and how states and local entities may provide input into the identification of such zones. We seek comment on whether, and, if so, how transmission providers can assess whether there is sufficient commercial interest in developing generation in any potential zones and transmission to interconnect the potential generation (for example, through studies or formal declarations of interest). We also seek comment on whether and, if so, what safeguards or incentives might be necessary to ensure that transmission infrastructure is built only to satisfy expected transmission needs and not overly speculative commercial interests. We also seek comment on whether any such requirement is consistent with the FPA's prohibition of unduly discriminatory or preferential rates.

58. We seek comment on whether the Commission should require transmission providers to account for trends in the resource mix in developing energy zones for anticipated future generation as part of planning for transmission needs related to such resources and if so, what would be the best way to do so? We seek comment whether it would be appropriate, as the resource mix further develops, to develop similar zones for the transmission needs driven by the development and interconnection of energy storage resources and how to do so.

59. In order to ensure that the more efficient or cost-effective transmission facilities are selected and that rates are just and reasonable, we also seek comment on whether: (1) Eligibility thresholds or criteria (*e.g.,* voltage levels, amount of new generation located within a given geographic area or load zone, etc.) may be appropriate to determine whether a proposed regional transmission facility should be considered as part of the regional transmission planning and cost allocation process for transmission facilities built for anticipated future generation; (2) whether the CREZ, MISO MVP, CAISO approaches, or other processes for identifying and planning for the needs of anticipated future generation are models for any potential requirements and, if so, which aspects of those initiatives the Commission should consider requiring transmission providers to implement, for example, the CREZ model of requiring future generation to financially commit in advance of construction; (3) whether there is a need for mechanisms to limit the risk to customers from planning for anticipated future generation, for example, we note CAISO's use of an *ex ante* cap on the total cost exposure to transmission customers in addressing generation resource interconnection, as one potential approach; [73] and (4) whether specific proposals are consistent with the Commission's FPA section 206 authority.

60. We also seek comment on whether the regional transmission planning process could be structured in such a way that is more collaborative, relying on the knowledge and experience that transmission providers, project developers, state commissions, and other stakeholders have regarding optimal locations, the topography of the transmission network, and Public Policy Requirements, among other factors that will influence the location and amount of future renewable resources. We note that the CREZ process was highly collaborative, with the Electric Reliability Council of Texas (ERCOT) conducting workshops with stakeholders over a six-month period to consider and evaluate multiple transmission scenarios.[74] In addition to seeking comment on technical and collaborative approaches to identify geographic zones for future renewable resources, we seek comment on potential alternative proposals from stakeholders on how to identify where transmission facilities may be needed to accommodate anticipated future generation. Commenters should address whether, if implemented, such a scenario planning process should be the same or different in non-RTO/ISO versus RTO/ISO regions, and if different, what those differences should be. Commenters should address how any proposed changes to the regional planning and cost allocation processes increase the efficiency, or lower the costs, of such processes and whether such changes will help ensure a reliable power supply and/or will reduce or control the costs of transmission and generation services that are ultimately passed on to customers of load serving entities. Commenters should also address proposed cost allocation.

iii. Incentivizing Regional Transmission Facilities

61. To prioritize regional transmission facilities that may have greater benefit-to-cost ratios than local alternatives, we seek comment on whether and, if so, how to expand or improve any incentives to incent the development of regional transmission facilities that demonstrably may offer a more efficient or cost-effective solution to an identified need than local alternatives. As an example of a possible regional transmission incentive, we seek comment on whether or not any available return on equity adder incentive that may be available for RTO/ISO participation should be limited in applicability only to regional, and not local, transmission facilities, when those regional transmission facilities are selected as the more efficient or cost-effective solution to an identified transmission need.

iv. Enhanced Interregional or State-to-State Coordination

62. We recognize that potential reforms discussed for comment above may require greater interregional or

[72] *Cal. Indep. Sys. Operator Corp.,* 119 FERC ¶ 61,061 (2007).

[73] *Id.* P 6.

[74] *See* Texas Commission, Order on Rehearing, Docket No. 33672, at 3 (Oct. 7, 2008).

state-regional coordination to be fully realized in a just, reasonable and not unduly discriminatory or preferential manner. As a result, we seek comment on whether reforms to the current interregional transmission coordination process, including potentially requiring interregional transmission planning, are needed or appropriate for making the potential approaches discussed above effective, and whether such reforms are consistent with the Commission's authority under section 206 of the FPA.

63. We seek comment on whether, because an interregional project must first be selected in each of the neighboring regions' regional planning processes before being selected in the interregional process, this challenge to the current interregional coordination process is impeding the selection and development of efficient, cost-effective interregional projects and, if so, what revisions are necessary to address that barrier. Should the Commission require joint planning processes, rather than simply joint coordination, for neighboring regions? In light of the potential reforms to regional planning and cost allocation and generator interconnection processes being considered in this ANOPR, are there core principles or approaches that the Commission should also consider when reviewing the existing approach to interregional planning? For example, should the Commission establish interregional reliability planning criteria or consider renewable resource geographic zones during interregional planning? Beyond interregional planning, can and should the Commission provide alternate pathways for transmission facilities that benefit multiple regions to be assigned cost allocation to customers across multiple regions? For example, should the Commission allow for identification of benefits, and allocation of commensurate costs, to one region of a project selected in a neighboring region's regional transmission planning process? Finally, comments should address whether taking any proposed action is consistent with the Commission's authority under section 206 of the FPA.

64. In addition, we seek comment on whether and, if so, how a regional states committee or other organized body of state officials should participate in the development and evaluation of assumptions or criteria used for regional transmission planning and cost allocation and interregional coordination and cost allocation for transmission needs related to future scenarios, including for anticipated future generation or geographic generation zones.

b. Coordinating Between the Regional Transmission Planning and Cost Allocation and Generator Interconnection Processes

65. We seek comment on whether reforms are needed to improve the coordination between the regional transmission planning and cost allocation and generator interconnection processes. We seek comment on whether the Commission should require transmission providers to operate their regional transmission planning and cost allocation and generator interconnection processes on concurrent, coordinated timeframes, with the same or similar assumptions and methods, and whether such a potential requirement may identify more efficient or cost-effective transmission solutions that could address needs shared between the two processes.

66. We seek comment on how the regional transmission planning and cost allocation and generator interconnection processes could be better coordinated or integrated. For example, would use of similar timeframes and assumptions facilitate more efficient or cost-effective transmission solutions? How could these processes most effectively be co-optimized? We seek comment on whether and, if so, how interconnection requests that trigger the need for interconnection-related network upgrades that may provide regional transmission benefits could be studied in a way that accounts for the potential broader transmission benefits associated with, for example, resource adequacy, operating reliability, and similar needs, and in coordination with the regional transmission planning process? We seek comment on whether and how relevant information from the generator interconnection process could be integrated into regional transmission planning in a timely manner, and whether and how transmission providers could move beyond using the outputs of each process as a deterministic input into the other rather than optimizing together across approaches. We also seek comment on whether it may be possible and beneficial to combine certain aspects of the transmission planning and generator interconnection processes, and if so, how?

67. We also seek comment on whether and how the Commission could revise transmission planning criteria that transmission providers use in the generator interconnection process so that they could better identify more efficient or cost-effective interconnection-related network upgrades. As indicated earlier, we also seek comment on whether and how transmission providers could incorporate anticipated future generation, including resources in the interconnection queue, in the regional transmission planning and cost allocation processes. In particular, we encourage commenters to discuss how to address concerns regarding uncertainty, including speculative projects, in planning for anticipated future generation.

68. Further, we seek comment on whether and how more effectively accounting for anticipated future generation in transmission planning may reduce the costs of interconnection-related network upgrades. To the extent this is the case, how should such benefits be identified, and should they factor into the regional transmission planning and cost allocation process?

B. Identification of Cost and Responsibility for Regional Transmission Facilities and Interconnection-Related Network Upgrades

69. The Commission has repeatedly recognized that, where cost allocation methods do not appropriately account for benefits associated with new transmission facilities, they may result in rates that are not just and reasonable or are unduly discriminatory or preferential.[75]

70. We seek comment on whether the existing approach to cost allocation in regional transmission planning processes fails to consider the full suite of benefits—and the associated beneficiaries—produced by transmission facilities developed to meet the transmission needs of the changing resource mix. We seek comment on whether the current approach omits relevant benefits of new transmission infrastructure and, if so, thereby fails to consider the entities that receive those benefits in the cost allocation process. What, specifically, are those other benefits that should be considered? In addition, while the regional transmission planning process considers transmission needs driven by reliability, economic considerations, and Public Policy Requirements, these types of transmission needs are, in

[75] *See* Order No. 890, 118 FERC ¶ 61,119 at P 557 (finding that how ''the costs of new transmission facilities are allocated is critical to the development of new infrastructure'' because ''[t]ransmission providers and customers cannot be expected to support the construction of new transmission unless they understand who will pay the associated cost''); Order No. 1000, 136 FERC ¶ 61,051 at PP 484–487; *see also Ill. Commerce Comm'n* v. *FERC,* 576 F.3d 470, 476 (7th Cir. 2009) (*ICC* v. *FERC*).

many cases, considered in isolation from one another and the cost allocation methods for transmission facilities developed in response to these needs are generally separated by type. We seek comment as to whether the existing regional transmission planning and cost allocation processes may not fully account for the full suite of benefits, including hard-to-quantify benefits, and may impede the allocation of the costs of transmission facilities needed to meet the transmission needs of the changing resource mix in a manner that is at least roughly commensurate with the actual benefits of those facilities. Getting that balance right is important not only to comply with the cost causation principle, but also because efforts to plan the transmission system to meet the needs of the changing resource mix will succeed only if the associated cost allocation methods are transparent, equitable, and practicable.[76]

71. With respect to cost allocation in the generator interconnection process, we seek comment as to whether the participant funding approach for interconnection-related network upgrades required for an interconnection request in RTOs/ISOs may no longer be just and reasonable. Participant funding may result in costly interconnection-related network upgrades being allocated entirely to interconnection customers while failing to account for the significant benefits that these interconnection-related network upgrades may provide to other anticipated future generators seeking to interconnect and/or existing or future transmission customers. We further seek comment on whether the narrow focus of the generator interconnection process results in only a subset of beneficiaries paying for transmission infrastructure that, in practice, may benefit many.

72. We seek comment on whether separating the regional transmission planning and cost allocation and generator interconnection processes may increasingly result in an only partial-accounting of the benefits of new transmission infrastructure, leaving some transmission and interconnection customers potentially bearing a disproportionate cost burden. We seek comment on whether any changes to the criteria used for considering which transmission facilities are selected in the regional transmission plan for purposes of regional cost allocation, as well as the formula for the regional allocation of costs of regional transmission facilities and for the cost of interconnection-related network upgrades, including changes to the definition of beneficiary, hold the potential to unjustly and unreasonably shift costs to customers of load serving entities. We seek comment on how any contemplated reforms or revisions to existing regulations are consistent with the FPA and its requirement for just and reasonable and not unduly discriminatory or preferential rates.

73. In the following sections, we address the relevant court and Commission precedent governing cost allocation and seek comment on a number of potential reforms to address these concerns and ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential.

1. Relevant Cost Causation Precedent

74. Pursuant to FPA sections 205 and 206, the Commission is responsible for ensuring that the rates, terms, and conditions for transmission of electricity in interstate commerce are just, reasonable, and not unduly discriminatory or preferential.[77] For a cost allocation approach to satisfy this standard, it must satisfy the cost causation principle. The cost causation principle requires that ''all approved rates reflect to some degree the costs actually caused by the customer who must pay them'' [78] and that costs ''be allocated to those who cause the costs to be incurred and reap the resulting benefits.'' [79] As the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) further explained, to ''the extent that a utility benefits from the costs of new facilities, it may be said to have 'caused' a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.'' [80] Courts ''evaluate compliance with this . . . principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.'' [81] In *ICC* v. *FERC,* the Seventh Circuit also stated that a cost allocation method can satisfy the cost causation principle if the Commission ''has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with'' the allocation of the costs.[82] The Seventh Circuit stated, however, that satisfying this requirement does not require exacting precision, and the Commission need not ''calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.'' [83]

2. Cost Allocation for Transmission Facilities Planned Through the Regional Transmission Planning Process

75. Potential reforms for which we seek comment in this ANOPR contemplate a more forward-looking approach to the regional transmission planning process that plans for anticipated future generation, potentially producing a different and broader set of benefits and beneficiaries. The following sections seek comment on potential reforms that may be necessary to ensure that the costs of transmission facilities developed to meet the transmission needs of the changing resource mix are allocated in a manner that is roughly commensurate with those benefits, while ensuring that any potential reforms or revisions to existing cost-allocation rules do not unjustly or unreasonably shift costs to any type of market participant or customers of load serving entities. We seek comment on whether certain benefits are not appropriate to account for under the FPA, and whether allocation of costs based on such benefits may be inconsistent with the Commission's statutory mandate.

a. Background

76. In Order No. 1000, the Commission determined that the lack of clear *ex ante* cost allocation methods that identify beneficiaries of proposed regional transmission facilities was

[76] *Cf. BNP Paribas Energy Trading GP* v. *FERC,* 743 F.3d 264, 268–269 (D.C. Cir. 2014) (*BNP Paribas Energy*) (''[T]he cost causation principle itself manifests a kind of equity. This is most obvious when we frame the principle (as we and the Commission often do) as a matter of making sure that burden is matched with benefit.'' (citing *Midwest ISO Transmission Owners* v. *FERC,* 373 F.3d 1361, 1368 (D.C. Cir. 2004) *and Se. Mich. Gas Co.* v. *FERC,* 133 F.3d 34, 41 (D.C. Cir. 1998))); Order No. 1000, 136 FERC ¶ 61,051 at P 669 (explaining that requiring cost allocation methods be open and transparent ensures that such methods are just and reasonable and not unduly discriminatory or preferential, aids in development and construction of new transmission, and may avoid contentious litigation or prolonged stakeholder debate); *KN Energy, Inc.* v. *FERC,* 968 F.2d 1295, 1300–01 (D.C. Cir. 1992) (describing properly designed rates as producing revenues ''*'which match, as closely as practicable, the costs to serve each class or individual customer'*'' (emphasis in original)) (quoting *Ala. Elec. Coop., Inc.* v. *FERC,* 684 F.2d 20, 27 (D.C. Cir. 1982)); *Pub. Serv. Co. of Colo.,* 163 FERC ¶ 61,204, at P 14 (2018) (recognizing that ''feasibility'' is part of ratemaking, such that the Commission may appropriately ''balance maximally reflecting cost causation with other competing policy goals,'' such as promoting more efficient or cost-effective regional transmission planning).

[77] 16 U.S.C. 824d, 824e.

[78] *KN Energy, Inc.* v. *FERC,* 968 F.2d at 1300.

[79] *S.C. Pub. Serv. Auth.,* 762 F.3d at 87 (quoting *NARUC* v. *FERC,* 475 F.3d at 1285).

[80] *ICC* v. *FERC,* 576 F.3d at 476.

[81] *Midwest ISO Transmission Owners* v. *FERC,* 373 F.3d at 1368.

[82] 576 F.3d at 477.

[83] *Id.* (citing *Midwest ISO Transmission Owners* v. *FERC,* 373 F.3d at 1369).

impairing the ability of transmission providers to implement more efficient or cost-effective transmission solutions identified in the regional transmission planning process. According to the Commission, the failure to address cost allocation in a way that aligns with the benefits of new transmission facilities could lead to needed transmission facilities not being built, adversely impacting ratepayers.[84] The Commission therefore required transmission providers to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in a regional transmission plan for purposes of cost allocation. To guide transmission providers, the Commission established a set of cost allocation principles that transmission providers' cost allocation methods must satisfy, with the goal of ensuring that the costs of transmission solutions chosen to meet regional transmission needs would be allocated to those that received benefits from them.[85] The Commission determined that this principles-based approach would result in the allocation of the costs of new transmission facilities in a manner that is at least roughly commensurate with the benefits received by those that pay those costs while allowing for regional flexibility.[86]

77. The six regional cost allocation principles that the Commission adopted in Order No. 1000 are: (1) Costs of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits; (2) those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities; [87] (3) a benefit to cost threshold ratio, if adopted, cannot exceed 1.25 to 1; [88] (4) costs must be allocated solely within the transmission planning region unless another entity outside the region voluntarily assumes a portion of those costs; [89] (5) the method for determining benefits and identifying beneficiaries must be transparent; [90] and (6) there may be different methods for different types of transmission facilities, such as those needed for reliability, congestion relief, or to achieve Public Policy Requirements.[91] Although the Commission required the regional cost allocation methods to determine benefits and identify beneficiaries in a transparent manner, the Commission also recognized that ''identifying which types of benefits are relevant for cost allocation purposes, which beneficiaries are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial.'' [92] Consistent with this notion, the Commission declined to require transmission providers to adopt a universal or comprehensive definition of ''benefits'' and ''beneficiaries'' [93] of regional transmission facilities, instead allowing for regional flexibility and examining each region's definitions on compliance.

78. The result is that transmission providers in each transmission planning region have implemented varying regional transmission cost allocation methods to comply with the cost allocation principles of Order No. 1000, the majority of which allocate the costs of regional transmission facilities that address reliability needs separately from those that address economic needs and separately from those that address Public Policy Requirements. In other words, most regional transmission cost allocation methods do not consider whether a regional transmission facility addresses more than one category of needs, and therefore provides more than one category of transmission benefits.

79. That said, some transmission providers' Order No. 1000-compliant regional transmission cost allocation methods may recognize a broader number of benefits than others and identify the broader benefits across a portfolio of transmission facilities rather than on a facility-by-facility basis, whereas others may be more constrained. For example, MISO's MVP process is designed to identify a portfolio of regional transmission facilities that: (1) Reliably and economically enable regional public policy needs; (2) provide multiple types of regional economic value; and/or (3) provide a combination of regional reliability and economic value. Specifically, MISO MVPs must be above 100 kV, have a project cost of $20 million or more, and have a combined benefit-to-cost ratio greater than 1.0 and must be evaluated as part of a portfolio of transmission projects.[94] The costs of this MVP portfolio are allocated on a postage stamp basis across the MISO region.[95]

80. Southwest Power Pool's (SPP) Balanced Portfolio process similarly considers broader transmission benefits.[96] SPP evaluates economic benefits of a portfolio of transmission facilities to achieve a balance where the benefits of the portfolio to each zone (as measured by adjusted production cost savings) equal or exceed the costs allocated to each zone over a 10-year period. By allocating costs such that the benefits to each zone will equal or exceed those costs, the Balanced Portfolio process ensures that SPP allocates costs in a manner that is least roughly commensurate with benefits by design. In addition, SPP may reallocate costs to ensure that the portfolio is balanced and, under certain conditions, including cancellation of a transmission facility or unanticipated decreases in benefits or increases in costs, may review a previously approved Balanced Portfolio and recommend reconfiguring the portfolio.[97]

81. As for allocating the costs of regional transmission facilities to generators, in Order No. 1000, while commenters requested that the Commission allow such costs to be allocated to generators as beneficiaries, the Commission determined that generator interconnection was outside the scope of the rulemaking.[98] However, the Commission also stated that transmission providers could propose a regional transmission cost allocation method that allocates costs directly to generators as beneficiaries, but any effort to do so must not be inconsistent with the Order No. 2003 generator interconnection process. The Commission noted that in not addressing these issues, it was neither minimizing the importance of evaluating the impact of generator interconnection requests during transmission planning, nor limiting the ability of transmission providers to use requests for generator interconnections in developing assumptions to be used in

[84] Order No. 1000, 136 FERC ¶ 61,051 at P 499.

[85] *Id.* PP 9, 482–83.

[86] *Id.* P 10; Order No. 1000–A, 139 FERC ¶ 61,132 at P 647.

[87] Order No. 1000, 136 FERC ¶ 61,051 at P 637.

[88] *Id.* P 646.

[89] *Id.* P 657.

[90] *Id.* P 668.

[91] *Id.* P 685.

[92] *Id.* P 501.

[93] Order No. 1000–A, 139 FERC ¶ 61,132 at P 679 (explaining that Order No. 1000 does not define benefits and beneficiaries but rather requires transmission providers to be definite about benefits and beneficiaries for purposes of their cost allocation methods).

[94] MISO, FERC Electric Tariff, Attachment FF, Section II.C (85.0.0).

[95] *Id.* Section III.A.2.g.

[96] SPP's Balanced Portfolio was an initiative to develop a group of economic transmission projects that benefit the entire SPP region and to allocate those transmission project costs regionally. The SPP Board of Directors approved the Balanced Portfolio transmission projects in April 2009.

[97] SPP OATT, attach. J (Recovery of Costs Associated With New Facilities), Section III.D.

[98] Order No. 1000, 136 FERC ¶ 61,051 at P 760.

the regional transmission planning process.[99]

82. Nevertheless, at least one transmission provider considers interconnection customers as beneficiaries of new transmission facilities. The Commission approved CAISO's proposal whereby transmission customers initially fund the transmission expansion needed to facilitate interconnection through the transmission revenue requirement of the constructing transmission provider, and interconnection customers are assigned their pro rata share of the going-forward costs of using the transmission facility as their generators interconnect to the transmission system. Under CAISO's proposal, all transmission system users pay the costs of the unsubscribed portion of a new transmission facility until the line is fully subscribed.[100] The CAISO approach also includes an *ex ante* cap on the total cost exposure to transmission customers, which was set at 15% of the sum total of the net high-voltage transmission plant of all transmission providers, as reflected in their transmission revenue requirements and in the CAISO transmission access charge.[101]

b. Potential Need for Reform

83. This statement in Order No. 1000 rings as true today as it did then—''identifying which types of benefits are relevant for cost allocation purposes, which beneficiaries are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial.'' [102] This is especially true for larger, regional transmission facilities that are both costly and could have potentially broad benefits. As the Commission recognized in Order No. 890, the manner in which the costs of new transmission facilities are allocated is ''critical'' to developing those facilities as is identifying the types of benefits and the associated beneficiaries of those facilities.[103]

84. The possible reforms for which we seek comment in this ANOPR seek to ensure the development of regional transmission facilities needed to meet the transmission needs of the changing resource mix occurs in a more efficient or cost-effective manner, at just and reasonable rates. Commenters should also address whether and how any reforms or revisions to existing rules could unjustly and unreasonably shift additional costs to customers of load serving entities. These reforms cannot be successful without ensuring that transmission providers and customers alike are able to identify the types of benefits of these transmission facilities can provide and also identify the beneficiaries that would receive those benefits, along with the relative proportion of benefits that accrue to each of those beneficiaries. The failure to account for all the benefits of a transmission facility while taking into account all the costs of the transmission facility does not allow for a fair examination of whether the costs are allocated roughly commensurate with the benefits. We seek comment on whether ignoring benefits of these transmission facilities may impair more efficient or cost-effective transmission development by limiting the number of facilities that overcome the cost-benefit threshold needed to justify the cost of new transmission, and if so, what the appropriate standard should be for identifying such benefits. This potential concern goes to the need to not only identify the types of benefits of these new transmission facilities, and to quantify those benefits where possible, but likewise to the need for transparent methods to calculate benefits and ascertain beneficiaries without being so burdensome that the methods hinder transmission development. We seek comment on whether customers of load serving entities should be required to pay the costs of regional transmission facilities that provide them only with unquantifiable or purported benefits, or be required to pay for costs driven by the public policies of state and local governments in states other than their own.[104]

85. Currently, most regional cost allocation methods do not consider whether a regional transmission facility addresses more than one category of needs, thereby providing more than one category of transmission benefits. Specifically, although the regional transmission planning process considers transmission needs driven by reliability, economic considerations, and Public Policy Requirements,[105] these types of transmission needs are generally considered in a silo from one another; the cost allocation methods for regional transmission facilities developed in response to these needs are similarly for the most part separated by type. We seek comment on whether the result is a paradigm that may potentially fail to consider the suite of benefits that transmission facilities provide and therefore fails to allocate the costs of such facilities roughly commensurate with the benefits.

86. We seek comment as to whether a shift to a more integrated and holistic process for regional transmission planning and cost allocation is appropriate. Such a shift may raise novel questions around which customers should pay for new transmission facilities and concerns about free riders benefitting from the transmission expansion without paying for their fair share. Under the potential reforms for which we seek comment in this ANOPR, the regional transmission planning process would identify transmission facilities that support future scenarios, including anticipated future generation, and improve pricing and cost allocation for interconnection-related network upgrades. In that scenario, interconnection customers themselves could be considered beneficiaries of transmission facilities that facilitate their interconnection, even if those transmission facilities were built prior to the generators entering the interconnection queue. We seek comment on whether merely making interconnection customers the beneficiaries fails to capture all of the relevant types of benefits for purposes of cost allocation of a regional transmission facility built to accommodate anticipated future generation. We also seek comment on whether it may therefore be preferable to consider developing new regional transmission cost allocation methods that measure all of the benefits of regional transmission facilities that are being assessed for potential selection in the regional transmission plan for purposes of cost allocation and that accrue to both transmission and interconnection customers.

87. We cannot ignore, of course, that it may be difficult to precisely quantify some of the benefits of transmission facilities, which can be a barrier to more broadly allocating the costs of those facilities among transmission and interconnection customers. Unlike costs, which are clearly defined and easily quantified, the scope of which transmission benefits count for purposes of cost allocation, and how well they need to be documented in order to be allocated to customers, is a distinct

[99] *Id.* P 760.

[100] *Cal. Indep. Sys. Operator Corp.,* 119 FERC ¶ 61,061.

[101] *Cal. Indep. Sys. Operator Corp.,* 119 FERC ¶ 61,061, at P 6.

[102] Order No. 1000, 136 FERC ¶ 61,051 at P 501.

[103] Order No. 890, 118 FERC ¶ 61,119 at P 557.

[104] *See, e.g.,* PJM's State Agreement Approach. *PJM Interconnection, L.L.C.,* 142 FERC ¶ 61,214, at PP 142–143 (2013), *order on reh'g and compliance,* 147 FERC ¶ 61,128, at P 92 (2014);

[105] Order No. 1000 left planning and cost allocation for Public Policy Requirements largely to the discretion of transmission providers. *See supra* P 16. Moreover, under PJM's State Agreement Approach (see supra n.104), the costs of transmission facilities required to meet the public policy requirements of an individual state or group of states may not be shifted to customers in other, non-participating states.

challenge to achieving a fair allocation. Requiring transmission providers to produce overly detailed reports on benefits before the costs of a transmission facility can be allocated to transmission and interconnection customers could lead to cost allocations that undervalue the largest transmission expansions, no matter their efficiency. The task is in striking the right balance to ensure just and reasonable rates and the allocation of transmission costs roughly commensurate with benefits.

88. We also note that, with greater deployment of renewable resources, and in part to the extent that regions focus on a project-specific regional transmission cost allocation method, it is possible that benefits may be distributed unevenly across regions. For example, there are likely zones or sub-zones within a region that are rich in renewable resources and therefore have generation significantly in excess of the local load. These zones, and generators in these zones, may not be the only beneficiaries of regional transmission facilities built to access these resources as customers outside those zones may reap reliability or economic benefits that result from the expanded transmission system and access to low cost resources. We seek comment on whether current regional transmission cost allocation approaches may not adequately address these circumstances and may not provide workable frameworks for the identification of transmission beneficiaries and sharing of benefits.

89. We seek comment on whether there should be reforms to cost allocation in regional transmission planning and cost allocation processes, including considering potentially a portfolio approach to assessing regional transmission facilities and consideration of a minimum set of transmission benefits, while seeking additional information about cost allocation approaches that may inform such reforms. Commenters proposing specific changes to cost allocation should address how such proposals will result in costs being allocated in a manner roughly commensurate with benefits, and demonstrate that costs will not be disproportionately borne by any given class of customers in a manner inconsistent with the requirements of the FPA and precedent. Commenters should also address how such proposals impact customers of load serving entities and whether and how proposed new cost allocation formulae may shift costs to new categories of customers and whether such cost-shifting is just and reasonable and consistent with the requirements of the FPA.

c. Potential Reforms and Request for Comment

90. We seek comment on whether broader transmission benefits should be taken into account when planning the transmission system for anticipated future generation, and how such benefits should be identified and quantified. Some transmission providers, *e.g.,* SPP, MISO, CAISO, and recently the New York Independent System Operator, Inc. (NYISO), have used broader transmission benefits in selecting regional transmission facilities for purposes of cost allocation in their regional transmission planning processes.

91. In addition, under a portfolio approach to regional transmission cost allocation, multiple transmission facilities are considered together, and the collective benefits of the transmission facilities are measured. MISO's MVP and SPP's Balanced Portfolio method are examples of portfolio approaches to regional transmission cost allocation. We seek comment on whether a portfolio approach recognizes that a regional transmission planning process that considers a group of transmission facilities that collectively provide multiple benefits, including reliability, economic, and Public Policy Requirements benefits, among others, may be able to better identify more efficient or cost-effective transmission facilities when compared to a process that focuses only on individual transmission facilities or individual benefits. We seek comment on whether an approach that both estimates broader transmission benefits for regional transmission facilities beyond those that are currently considered and that also allocates the costs for a portfolio of those individual transmission facilities may provide a cost allocation method that better matches benefits to burdens over time.[106] We seek comment on whether such an approach may also be more accurate or less likely to lead to anomalous results.

92. At the same time, we seek comment on whether there are circumstances in which the use of criteria other than reliability and economic considerations may result in projects being selected in the regional transmission plan for purposes of cost allocation that do not represent the optimal solution to the reliability or congestion problems identified and thus may not represent the most efficient or cost-effective solution for customers of the load serving entities both inside an RTO/ISO and in non-RTO/ISO region. Any proposals for changes to planning criteria and cost allocation should consider whether such proposals result in unjustly and unreasonably shifting costs to customers. We seek comment on whether the use of planning criteria beyond reliability and economic considerations may place the burden for the costs driven by Public Policy Requirements of one state on customers of load serving entities in non-participating states.

93. We seek comment on the current approaches that transmission providers take in defining transmission benefits for purposes transmission planning and cost allocation. For example, we are interested in how transmission providers calculate adjusted production costs, the extent to which transmission providers go beyond adjusted production costs in identifying transmission benefits, the types of benefits, and the methods for estimating. We also seek comment on the extent to which it may be challenging, for certain types of benefits, to identify the beneficiaries for cost allocation purposes. We seek comment on the extent to which the same set of benefits is currently used in regional transmission planning processes and their associated cost allocation processes, or whether some benefits are identified but not factored into cost allocation. Should the same set of benefits be used in all processes? If not, would it be appropriate to consider different benefits during the transmission planning and cost allocation stages? If so, what would be the basis for doing so?

94. We seek comment on the types of benefits provided by transmission facilities needed to meet the transmission needs of anticipated future generation that are relevant for cost allocation purposes and the manner in which those benefits can be quantified, if at all. This includes consideration of whether there are transmission benefits beyond those that transmission providers already take into account in allocating costs that the Commission should require all transmission providers to consider for regional transmission facilities. In other words, should the Commission require transmission providers to establish a broader set of transmission benefits for purposes of cost allocation than currently in use and, likewise, should the Commission adopt a minimum set of transmission benefits that must be considered? Such benefits could encompass economic benefits (*e.g.,*

[106] *See BNP Paribas Energy,* 743 F.3d at 268–69 (framing the cost causation principle ''as a matter of making sure that burden is matched with benefit'').

congestion reduction); resource adequacy benefits (*e.g.,* allowing imports to replace more expensive local generation, lowering required planning targets through increased diversity benefits); and reliability benefits (*e.g.,* avoided or deferred reliability transmission facilities, improved reserves sharing, increased voltage support). And to what extent are there benefits that will differ from region-to-region?

95. If there are types of benefits that cannot be quantified, but which are real and relevant to allocating the costs of regional transmission facilities roughly commensurate with benefits, we seek comment on how transmission providers can document and account for those benefits in crafting a cost allocation method. Similarly, we seek comment on whether the inability to precisely quantify benefits of transmission facilities can be a barrier to the development of those facilities, particularly those with potentially broad transmission benefits. If so, we are interested in what types of transmission facilities are most impacted and what types of benefits are typically associated with those types of transmission facilities, and how those benefits can be justified and quantified.

96. To the extent that there are relevant benefits that are difficult to quantify, we seek comment on ways in which the Commission can consider whether those benefits are appropriately credited to a regional transmission facility and accounted for as part of allocating the costs to beneficiaries. This includes consideration of when benefits of a transmission facility are sufficiently certain to justify a commensurately broad cost allocation, especially where those benefits are not susceptible to precise quantification. We also seek comment on whether it is appropriate to credit benefits that cannot be credibly quantified and whether, and if so, how, it is appropriate to factor such benefits into regional cost allocation.

97. In addition to identifying benefits, we also seek comment on best practices for identifying the beneficiaries of a transmission facility. For example, some interconnection-related network upgrades for generator interconnection may benefit more than a single interconnecting generator, however the scope (temporal and geographic) of such beneficiaries may not be clear. We seek comment on the efficacy and desirability of a regional transmission planning and cost allocation process that seeks to plan for future scenarios, including planning for anticipated future generation. What methods for ascertaining beneficiaries are most effective in allocating the costs of such facilities roughly commensurate with benefits? Are there threshold transmission system conditions that would enable the Commission to reasonably conclude that regional (or some greater or lesser geographical scope) allocation of costs is appropriate (such as the amount of congestion or level of interconnectedness in a particular area)? This necessarily links to our earlier questions about how to quantify benefits and what level of precision is required.

98. Along the same lines of identifying beneficiaries, we seek comment on whether the costs of transmission facilities planned in the regional transmission planning process for which we seek comment in this ANOPR should be allocated to both transmission and interconnection customers. As explained earlier, we are concerned about potential free-rider problems associated with interconnection customers that later connect to transmission facilities planned for anticipated future generation. We are therefore interested in approaches to cost allocation to ensure that both transmission and interconnection customers that benefit from those facilities pay their fair share. While we propose to potentially reform participant funding by interconnection customers of interconnection-related network upgrades, we are also considering how best to allocate costs of regional transmission facilities to interconnection customers (*e.g.,* whether cost allocation methods for regional transmission facilities should allocate a portion of the costs of a regional transmission facility directly to interconnection customers based on, for example, the capacity of the interconnection customer's generating facility).

99. We seek comment on the cost effectiveness of the reforms discussed herein. If the regional transmission planning and cost allocation processes are to consider transmission needs driven by anticipated future generation, is there a tradeoff between facilitating the construction of transmission facilities that are needed to connect such anticipated future generation, and ensuring against building more transmission than is necessary? If so, how should the Commission approach that tradeoff?

3. Participant Funding and Crediting Policy for Funding Interconnection-Related Network Upgrades

100. Since the issuance of Order No. 2003, the composition of the generation fleet has rapidly shifted from predominately large, centralized resources to include a large proportion of smaller renewable generators that, due to their distance from load centers, often require extensive interconnection-related network upgrades to interconnect to the transmission system. The significant interconnection-related network upgrades necessary to accommodate geographically remote generation are a result that the Commission did not contemplate when it established the interconnection pricing policy for interconnection-related network upgrades. Because the large-scale changes since Order No. 2003 may have impacted the underlying rationale for the interconnection pricing policy, we seek comment on whether the Commission should modify the participant funding and crediting policies, as discussed in further detail below.

a. Background

i. Original Rationale for the Order No. 2003 Interconnection-Related Network Upgrade Funding Requirements

101. As discussed above, the Commission in Order No. 2003 described two general approaches for assigning the costs of interconnection-related network upgrades needed to interconnect a generating facility to the transmission system: (1) the crediting policy, whereby the interconnection customer initially funds the interconnection-related network upgrades and is reimbursed through transmission credits; [107] and (2) participant funding, where the costs of interconnection-related network upgrades in RTOs/ISOs are assigned directly to the interconnection customer. Central to discussions of the Commission's interconnection-related network upgrade funding requirements is Order No. 2003's continued prohibition of ''and'' pricing. This prohibition provides that, when ''a Transmission Provider must construct

[107] 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 facility's commercial operation date], whichever is less.'' Order No. 2003–B, 109 FERC ¶ 61,287 at PP 3, 36. If credits have not fully reimbursed the upfront payment within 20 years, Order No. 2003 requires ''a balloon payment'' at the end of year 20. *Id.* P 36. The crediting policy also requires that affected system operators provide credits for transmission service taken on an affected system. *Id.* P 42. Even if the interconnection customer does not take transmission service over the affected system, however, the affected system operator must still provide the 20-year balloon payment to refund any remaining balance to the interconnection customer. Order No. 2003–C, 111 FERC ¶ 61,401 at P 13.

[interconnection-related] Network Upgrades to provide new or expanded transmission service, the Commission generally allows the Transmission Provider to charge the higher of the embedded costs of the Transmission System with expansion costs rolled in, or incremental expansion costs, but not the sum of the two.'' [108] The Commission also explained that allowing the transmission provider to charge either the higher of an embedded cost rate for transmission service or an incremental rate designed to recover the cost of the interconnection-related network upgrades ''provides the Transmission Provider with a cost recovery mechanism that ensures that native load and other transmission customers will not subsidize service to the Interconnection Customer.'' [109]

(a) Crediting Policy

102. The Commission instituted the crediting policy to achieve multiple objectives. First, the Commission found that this policy would avoid prohibited ''and'' pricing for interconnection-related network upgrades because it ensures that the interconnection customer will not be charged twice for the use of the transmission system by paying both for the incremental cost of the upgrade and an embedded-cost rate (with the cost of that interconnection-related network upgrade rolled in) for use of the transmission system.[110] Also, the Commission stated that the crediting policy was intended to facilitate the efficient construction of interconnection-related network upgrades and enhance competition in bulk power markets by promoting the construction of new generation [111] Furthermore, the Commission found that the crediting policy would ensure comparable treatment for interconnection customers that are not affiliated with the transmission provider, as transmission providers traditionally roll the costs of interconnection-related network upgrades associated with their own generating facilities into their transmission rates.[112]

103. Additionally, in Order No. 2003–A, the Commission stated that it does ''not believe that the costs of [interconnection-related] Network Upgrades required to interconnect a Generating Facility to the Transmission System of a non-independent Transmission Provider are properly allocable to the Interconnection Customer through direct assignment because upgrades to the transmission grid benefit all customers.'' [113] The Commission also stated that the crediting policy has a two-fold purpose. First, by providing the transmission provider with a source of funds to construct the interconnection-related network upgrades, the upfront payment by the interconnection customer alleviates any delay that might result if the transmission provider were forced to secure funding elsewhere. Second, by placing the interconnection customer initially at risk for the full cost of the interconnection-related network upgrades, the upfront payment provides the interconnection customer with a strong incentive to make efficient siting decisions and, in general, to make good faith requests for interconnection service.[114]

104. In *NARUC* v. *FERC,*[115] multiple petitioners challenged the crediting policy established in Order No. 2003. The petitioners argued that the crediting policy was inconsistent with the cost causation principle because they disagreed with the Commission's conclusions that ''[interconnection-related] Network Upgrades benefit the entire network,'' [116] and therefore, all transmission customers should essentially pay for those interconnection-related network upgrades through the crediting policy.[117] The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) agreed with the Commission's position and noted that the D.C. Circuit had previously ''endorsed the approach of 'assign[ing] the costs of system-wide benefits to all customers on an integrated transmission grid.' '' [118]

(b) *Participant Funding*

105. In Order No. 2003, the Commission stated that ''under the right circumstances, a well-designed and independently administered participant funding policy for [interconnection-related] Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach.'' [119] Therefore, the Commission stated that it would provide RTOs/ISOs with the flexibility to propose participant funding for interconnection-related network upgrades for a generator interconnection.[120] In accordance with this flexibility, the Commission did not prescribe specific policies for RTOs/ISOs but instead provided them with the flexibility to adopt policies of their own choosing, subject to Commission approval.[121] Over time, each RTO/ISO sought, and the Commission accepted, independent entity variations to adopt some form of participant funding rather than the crediting policy.

106. The Commission expressed its willingness to consider a well-designed participant funding approach in response to commenter concerns that the crediting policy ''mutes somewhat the Interconnection Customer's incentive to make an efficient siting decision that takes new transmission costs into account, and it provides the Interconnection Customer with what many view as an improper subsidy, particularly when the Interconnection Customer chooses to sell its output off-system.'' [122] Additionally, while the Commission mandated the crediting policy for non-independent transmission providers, Order No. 2003 acknowledged that the concerns that gave rise to the adoption of the crediting policy do not apply to RTOs/ISOs. For example, Order No. 2003 noted that ''a number of aspects of the 'but for' approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage'' by, for example, finding ''that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers.'' [123] In contrast, however, the Commission noted that RTOs and ISOs are independent, and neither own nor have affiliates that own generating facilities and thus do not have an incentive to discourage new generation by competitors.[124]

107. The Commission also explained that participant funding might speed up the development of new transmission infrastructure. In particular, Order No. 2003 postulated that ''participant

[108] Order No. 2003, 104 FERC ¶ 61,103 at n.111.

[109] Order No. 2003–A, 106 FERC ¶ 61,220 at P 613.

[110] Order No. 2003, 104 FERC ¶ 61,103 at P 694.

[111] *Id.* PP 612, 694.

[112] *Id.* P 694.

[113] Order No. 2003–A, 106 FERC ¶ 61,220 at P 212. As noted in the discussion below on participant funding, the Commission has allowed direct assignment of interconnection-related network upgrade costs to generators interconnecting to independent transmission providers such as RTOs/ISOs.

[114] *Id.* P 613.

[115] 475 F.3d 1277.

[116] *Id.,* 475 F.3d at 1285.

[117] *Id.* (citing *Pub. Serv. Co. of Colo.,* 62 FERC ¶ 61,013, at 61,061 (1993)).

[118] *Id.* (citing *W. Mass. Elec. Co.* v. *FERC,* 165 F.3d 922, 927 (DC Cir. 1999)).

[119] Order No. 2003, 104 FERC ¶ 61,103 at P 695.

[120] *Id.* P 28.

[121] Order No. 2003–A, 106 FERC ¶ 61,220 at P 696.

[122] Order No. 2003, 104 FERC ¶ 61,103 at P 695.

[123] *Id.* n.111.

[124] Order No. 2003–A, 106 FERC ¶ 61,220 at P 691.

funding of [interconnection-related network] upgrades may provide the pricing framework needed to overcome the reluctance of incumbent Transmission Owners in many parts of the country to build transmission, with the result that badly needed transmission infrastructure could be put in place quickly.'' [125]

108. RTOs/ISOs that have adopted a participant funding approach do not reimburse interconnection customers with transmission service credits for the cost of the interconnection-related network upgrades. Instead, the Commission allowed interconnection customers to receive well-defined capacity rights that are created by the interconnection-related network upgrades.[126] As an example, the Commission in Order No. 2003 pointed to PJM Firm Transmission Rights and Capacity Interconnection Rights, which, it stated, are ''created by the [interconnection-related] Network Upgrades for which the Interconnection Customer pays, and they are well-defined, long-term and tradeable.'' [127] The Commission stated that provision of such ''well-defined capacity rights'' in lieu of credits does not violate the prohibition of ''and'' pricing because the ''Interconnection Customer pays separate charges for separate services,'' namely ''an access charge for transmission service that may involve an obligation to pay congestion charges, and in exchange for its 'but for' payment, [the interconnection customer] receives these well-defined capacity rights, which provide some protection for having to actually pay the congestion charges.'' [128]

109. Commission precedent makes clear that the purpose of providing ''well-defined'' rights is not to provide full reimbursement for the costs of interconnection-related network upgrades. In fact, where an RTO/ISO adopts a participant funding approach for interconnection-related network upgrades required to interconnect an interconnection customer, there is no requirement that the capacity rights being awarded for interconnection-related network upgrades have equal value to the cost of the interconnection-related network upgrades because the costs would not exist ''but for'' the proposed interconnection and are simply part of a project's construction costs and business risk that the interconnection customer must consider.[129] Moreover, RTOs/ISOs are ''not required to provide transmission capacity rights where . . . the network upgrades create no additional transmission capability.'' [130] To this point, the Commission in *Old Dominion Electric Cooperative* v. *PJM Interconnection, L.L.C.* explained that, while Order No. 2003 ''stated that generation interconnection customers would receive capacity rights, those statements were based on the assumption that a network upgrade provided by an interconnection customer would create additional transmission capability beyond that needed to simply interconnect with the grid.'' [131]

110. Again, each RTO/ISO sought an independent entity variation to adopt a participant funding approach rather than adopt the crediting policy. In MISO, an interconnection customer is responsible for 100% of interconnection-related network upgrade costs, with a possible 10% reimbursement or ''crediting'' for interconnection-related network upgrades that are 345 kV and above.[132] In CAISO, the interconnection customer's cost responsibility for a particular interconnection-related network upgrade depends on how CAISO classified the interconnection-related network upgrade (*i.e.,* whether the interconnection-related network upgrade is considered area, local, or reliability) and the interconnection-related network upgrade's deliverability status (*e.g.,* full capacity, partial capacity, or energy-only).[133] In CAISO, full cash reimbursement is only available for the costs of certain categories of interconnection-related network upgrades, up to $60,000 per MW of installed generation capacity, and interconnecting generators receive congestion revenue rights in exchange for funding any upgrades that are not eligible for cash reimbursement. SPP, NYISO, PJM, and ISO-New England, Inc. use a participant funding approach where the transmission provider assigns 100% of the interconnection-related network upgrade costs to the interconnection customer and the interconnection customer may receive compensation through transmission capacity rights.[134]

b. Potential Need for Reform

i. Participant Funding

111. Since the issuance of Order No. 2003, changing circumstances have cast doubt on whether it continues to be just and reasonable to provide RTOs/ISOs with the flexibility to adopt participant funding approaches for interconnection-related network upgrades. We seek comment on whether these developments suggest that the allowance of participant funding for interconnection-related network upgrades, both as a concept and in its application, may no longer be just and reasonable. Moreover, it appears that the incentives created by participant funding in this context may produce outcomes that are counter to the Commission's intentions in allowing flexibility for RTOs/ISOs to adopt participant funding in Order No. 2003.

112. To begin with, participant funding may allocate the costs of extensive interconnection-related network upgrades entirely to interconnection customers without accounting for the significant benefits that these interconnection-related network upgrades may provide to transmission customers. As a result, there are circumstances where this allocation of interconnection-related network upgrade costs may not be roughly commensurate with the distribution of benefits. For instance, a large interconnection-related network upgrade built on a consistently congested portion of the transmission system may provide significant

[125] Order No. 2003, 104 FERC ¶ 61,103 at P 703.

[126] *Id.* P 700.

[127] *Id.*

[128] *Id.*

[129] *PJM Interconnection, L.L.C.,* 108 FERC ¶ 61,025, at P 20 (2004); *see also Midwest Indep. Transmission Sys. Operator, Inc.,* 114 FERC ¶ 61,106, at P 66 (2006).

[130] *Old Dominion Elec. Coop.* v. *PJM Interconnection, L.L.C.,* 119 FERC ¶ 61,052, at P 18 (2007) (*ODEC* v. *PJM*).

[131] *ODEC* v. *PJM,* 119 FERC ¶ 61,052 at P 18; *see also id.* P 16 (''Not every system upgrade required simply to interconnect a generating facility safely to the grid entitles the generator to capacity rights; however, a generation interconnection customer would be 'allowed to receive' capacity rights if a [interconnection-related] network upgrade creates additional transmission capability.'').

[132] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.,* 164 FERC ¶ 61,158, at P 5 (2018) (''MISO's Interconnection Customer Funding Policy . . . requiring the interconnection customer to 'participant fund' 90–100 percent of its [interconnection-related] network upgrades . . . was accepted, under the Order No. 2003 independent entity variation standard in 2009.''); *Midwest Indep. Transmission Sys. Operator, Inc.,* 129 FERC ¶ 61,060, at P 8 (2009) (accepting MISO's ''proposed change [that] would result in the interconnection customer bearing 100 percent of the costs of [interconnection-related] network upgrades rated below 345 kV and bearing 90 percent of the costs of [interconnection-related] network upgrades rated at 345 kV and above (with the remaining 10 percent being recovered on a system-wide basis'')); *Midwest Indep. Trans. Sys. Operator, Inc.,* 114 FERC ¶ 61,106, at P 62 (2006).

[133] *Cal. Indep. Sys. Operator Corp.,* 140 FERC ¶ 61,070, at PP 24–27 (2012).

[134] *PJM Interconnection, L.L.C.,* 108 FERC ¶ 61,025 (2004); *Sw. Power Pool, Inc.,* 127 FERC ¶ 61,283 (2009); *Sw. Power Pool, Inc.,* 171 FERC ¶ 61,272 (2020); *N.Y. Indep. Sys. Operator, Inc.,* 108 FERC ¶ 61,159 (2004), *order on reh'g,* 111 FERC ¶ 61,347 (2005); *ISO New Eng. Inc.,* 133 FERC ¶ 61,229 (2010).

economic and reliability benefits to transmission customers. Also, transmission customers, in some instances, can make use of any excess transmission capacity created by a participant funded interconnection-related network upgrade without paying any of the capital costs that are paid for through a participant funding approach. Allowing transmission customers to receive the benefits of interconnection-related network upgrades without paying for a proportionate share of their costs is an example of the ''free rider'' problem that the Commission's ''beneficiary pays'' cost causation principle is supposed to avoid.[135]

113. Furthermore, while the interconnection customer may receive well-defined capacity rights associated with the increased transfer capability caused by the interconnection-related network upgrade, these well-defined capacity rights do not compensate the interconnection customer for the broad range of benefits that the interconnection-related network upgrades can provide to the transmission system and therefore do not solve the ''free rider'' problem. This is because the well-defined capacity rights do not capture reductions in congestion costs paid by transmission customers that were the result of the expansion of the transfer capability created by the interconnection-related network upgrade; nor do they capture transmission service charges for use of the excess capacity created by the interconnection-related network upgrade. Instead, well-defined capacity rights capture congestion costs paid by transmission customers on a going forward basis across the relevant transmission path on which the interconnection-related network upgrade increased transmission capacity. To the extent that the interconnection-related network upgrade may have eliminated most of the *ex ante* congestion on the relevant paths, the transmission customers that transact across such paths and have their congestion costs reduced as a result of the large interconnection-related network upgrade now in service will receive this benefit for free in most cases.

114. We seek comment on whether costs allocated to interconnection customers pursuant to participant funding approaches have increased over time, and if so, why. We seek comment on whether this increase in costs is evidence that regional transmission planning processes are not building adequate transmission system capacity. We seek comment on whether the Commission's policies on participant funding have impacted the interconnection queue, *e.g.,* through late-state withdrawals, and if so, how and to what degree. In the case that there are late-stage withdrawals from the interconnection queue, we seek comment on the ability of transmission providers to efficiently process interconnection requests from other interconnection customers affected by the withdrawal. Finally, we seek comment on whether uncertainty regarding interconnection costs drives up the cost of developing supply resources and thereby ultimately increases the cost of electricity supply for customers.

115. Participant funding also may create a separate incentive for the interconnection customer that may undermine the development of interconnection-related network upgrades that produce greater benefits. Specifically, the interconnection customer, knowing that it will be responsible for all interconnection-related network upgrade costs, is likely to strongly oppose any addition or modification to the transmission system beyond what is necessary to support its own interconnection, even if such additions and modifications may ultimately benefit it and others by providing improved reliability or economic outcomes.[136]

116. An additional rationale that the Commission provided in Order No. 2003 for allowing participant funding was the concern that the interconnection crediting policy would ''mute somewhat the Interconnection Customer's incentive to make an efficient siting decision that takes transmission costs into account.'' [137] The Commission in Order No. 2003 also found that participant funding in RTOs/ISOs is consistent with the policy of promoting competitive wholesale markets because it causes the interconnection customer to face the same marginal cost price signal that it would face in a competitive market.[138] We seek comment on whether to reconsider these findings in light of current circumstances.

117. We note, for instance, that the Commission's view of efficient siting of generation in Order No. 2003 was from a transmission costs perspective, *i.e.,* which points of interconnection would require the least expensive interconnection-related network upgrades. We seek comment on whether this perspective may be at odds with the primary siting considerations for renewable generation developers decades later. That is, interconnection at locations where renewable generation may experience higher efficiency factors (*e.g.,* because they have abundant wind or sun) may still be uneconomic where participant funding applies because the costs of interconnection-related network upgrades for that location may be significant and would not be allocated beyond the interconnection customer. We seek comment on whether interconnection at such locations may be considered economic, however, if the cost of the interconnection-related network upgrades were allocated more broadly among those that benefit. Thus, because the price signal participant funding sends does not account for the broader economic efficiencies from siting renewable generation in fuel-rich areas, it can instead encourage the development of renewable generation in less productive locations. Because increased renewable resource penetration in RTOs/ISOs is likely to continue, it may make less sense to retain a policy that encourages renewable developers to develop lower quality, less dependable renewable resources.

118. Further, given the uncertainty created by the RTO/ISO queue backlogs and cascading interconnection-related network upgrade cost allocations that move from withdrawing higher-queued interconnection customers to lower-queued interconnection customers, participant funding may no longer provide efficient price signals that allow generators to act freely to achieve the desirable level of entry of new cost-effective generating capacity. We understand that a contributing factor to the interconnection queue backlog is a tendency by interconnection customers to submit multiple interconnection requests at different points of interconnection, with the intention of discovering the lowest cost site for a

[135] *See, e.g.,* Order No. 1000–A, 139 FERC ¶ 61,132 at P 562 (''Given the nature of transmission operations, it is possible that an entity that uses part of the transmission grid will obtain benefits from transmission facility enlargements and improvements in another part of that grid regardless of whether they have a contract for service on that part of the grid and regardless of whether they pay for those benefits. This is the essence of the 'free rider' problem the Commission is seeking to address through its cost allocation reforms.'').

[136] *See Review of Generator Interconnection Agreements and Procedures,* Technical Conference Transcript, Docket No. RM16–12–000 at Tr: 193: 20–24 (Steve Naumann, Exelon) (filed Aug. 23, 2016) (''[Y]ou need to also deal with the [interconnection] customer who says, 'Okay, I will be perfectly willing to take the risk, but I don't want to pay for a single upgrade more than I have to [to] have a the reliability interconnection.'').

[137] Order No. 2003, 104 FERC ¶ 61,103 at P 695.

[138] *Id.* P 702.

project (from an interconnection perspective), and then withdrawing higher-cost projects from the queue later in the process. This tendency can require numerous restudies and reallocation of interconnection-related network upgrade costs, compounding the uncertainty surrounding the amount of interconnection-related network upgrade costs that will be attributable to viable projects as the queue progresses.

119. We seek comment on whether it is appropriate to eliminate or reduce participant funding for interconnection-related network upgrades in RTOs/ISOs and whether any specific proposed changes to interconnection funding mechanisms allocate costs in a manner roughly commensurate with benefits and are otherwise consistent with the Commission's authority under the FPA and do not unjustly or unreasonably shift costs to customers of load serving entities.

ii. Crediting Policy

120. We seek comments on whether we should revisit the crediting policy in all regions by requiring that transmission providers, instead of interconnection customers, fund upfront all or a portion of the interconnection-related network upgrade costs. We describe multiple variations of this proposal below. Some generation developers may find it difficult to provide upfront funding for the costs of network upgrades when the reimbursement period can be as long as 20 years. Accordingly, we seek comment on whether the current approach may unjustly and unreasonably allocate significant financing costs for interconnection-related network upgrades to interconnection customers when the benefits of the interconnection-related network upgrades accrue to the broader system. We seek comment on whether, if interconnection-related network upgrade costs are increasing on average, it is possible that these upfront funding costs may pose an unjust and unreasonable barrier to entry for generation developers. Given these considerations, below we seek comment on some potential reforms to the crediting policy.

c. Potential Reforms and Request for Comment

121. We seek comment on whether the Commission should eliminate the independent entity variations that allow RTOs/ISOs to use participant funding for interconnection-related network upgrades. We also seek comment on potential approaches for modifying or replacing the existing crediting policy for the costs of interconnection-related network upgrades in all regions. We seek comment on these options and invite alternative suggestions by commenters that take into consideration the concerns discussed above.

122. Additionally, for each of the reforms contemplated below, we seek comment on whether there are articulable and plausible reasons to believe that these reforms would allocate the costs of interconnection-related network upgrades in a manner that is at least roughly commensurate with the benefits of those interconnection-related network upgrades and that do not unjustly and unreasonably shift costs to customers of load serving entities or are otherwise inconsistent with the Commission's statutory authority.

i. Eliminate Participant Funding for Interconnection-Related Network Upgrades

123. We seek comment on whether participant funding of interconnection-related network upgrades may be unjust and unreasonable. We seek comment on whether RTOs/ISOs with previously approved independent entity variations that directly assign some or all the cost responsibility for interconnection-related network upgrades to interconnection customers should be required to revise their tariffs to remove the participant funding of interconnection-related network upgrade requirements and instead implement the crediting policy as prescribed in the *pro forma* LGIA.

124. The potential proposal to eliminate participant funding of interconnection-related network upgrades in RTOs/ISOs would recognize, however, that simply because an interconnection request makes an interconnection-related network upgrade necessary for interconnection (and in that sense, ''causes'' the need for interconnection-related network upgrades that would not be needed ''but for'' an interconnection request), an interconnection-related network upgrade may sufficiently benefit transmission customers that it is appropriate to allocate the interconnection-related network upgrade costs more broadly. Also, this potential proposal could address the free rider problem that is created by participant funding of interconnection-related network upgrades. We note, however, that the specific proposal is to eliminate participant funding and replace it with the crediting policy, a pricing approach that still requires interconnection customers to initially fund interconnection-related network upgrades.[139] Moreover, no potential reform presented here would modify the existing requirement that an interconnection customer bear cost responsibility for the interconnection facilities that would not be needed but for its interconnection request.

125. We seek comment on whether the removal of participant funding of interconnection-related network upgrades may also have the potential to increase integration of generation by removing the possibly prohibitive cost assignment that participant funding can place on some interconnection customers. Furthermore, it may reduce cost uncertainty to those resources in the interconnection queue, and by extension, increase the likelihood that an interconnection request will result in a developed generating facility.[140]

126. Additionally, we seek comment on whether eliminating participant funding may reduce the queue backlogs that plague many regions because interconnection customers would have less incentive to submit multiple interconnection requests in an attempt to lower their interconnection costs, and may no longer drop out of interconnection queues at late stages due to unforeseen interconnection-related network upgrade cost increases. To these points, we seek comment on the number of interconnection requests that have withdrawn from the queue because the direct assignment of significant interconnection-related network upgrade costs made otherwise viable interconnection requests uneconomic.

127. We seek comment on whether the independent entity variation granted to RTOs/ISOs in Order No. 2003 is no longer just and reasonable. In general, we seek comment on whether the incentives created by participant funding of interconnection-related network upgrades in RTOs/ISOs may produce outcomes that are counter to the Commission's transmission planning and cost allocation efforts.

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[139] As noted below, however, we are exploring reforms to the existing crediting policy approach (that could be adopted alone or in combination with the elimination of participant funding) that could reduce the level of upfront funding to be provided by the interconnection customers.

[140] *See, e.g., Review of Generator Interconnection Agreements and Procedures,* Technical Conference Transcript, Docket No. RM16–12–000, at Tr. 25: 8–15 (May 13, 2016) (Dean Gosselin, NextEra) (filed Aug. 23, 2016) (''I'd like to just talk about what is optimal . . . as a developer . . . trying to advance [a project] to fruition . . . . I would say for the interconnection queue that the initial results closely match final results in a defined and reasonable timeline, that would be my definition.''); *id.* at 134:5–7 (Omar Martino, EDF Renewable Energy) (''[C]osts can change dramatically between [the] system impact and [the] facility study.'').

128. We are aware that there could be complications associated with implementing the crediting policy in RTOs/ISOs with zonal transmission rates that do not occur outside RTOs/ISOs. Outside RTOs/ISOs, a single transmission provider owns and operates its transmission system and generally charges a single rate for the entire system, regardless of the specific transmission customer's location. In contrast, an RTO/ISO operates the combined transmission assets of multiple transmission owners within its footprint at non-pancaked transmission rates, and generally has separate transmission pricing zones. The transmission rates for each zone are generally designed to recover the costs of transmission facilities *located* within each zone. As a result, we seek comment on whether simply applying the crediting policy currently used outside RTOs/ISOs in RTOs/ISOs may disproportionately increase the burden to the native load of transmission zones where large amounts of interconnection-related network upgrades are constructed to facilitate the interconnection of location-constrained resources, which ultimately may benefit the entire RTO/ISO footprint.

129. Under a crediting policy in an RTO/ISO, there may be a need for an appropriate mechanism to reimburse the interconnection customers, including a mechanism for determining which transmission owner(s) or zonal transmission rates will include the interconnection-related network upgrade costs. For example, there is a question of whether it would be just and reasonable to allocate the costs only within the transmission zone where the interconnection-related network upgrade is located or more broadly to multiple transmission zones.[141] We therefore seek comment on how to implement the crediting policy in RTOs/ISOs and what principles should be used to guide the application of the crediting policy in RTOs/ISOs.

130. Finally, given the concerns about the free-rider problem and whether the ''well-defined capacity rights'' received by interconnection customers capture the benefits the interconnection-related network upgrades provide to the system, we seek comment on: (1) The value of the ''well-defined capacity rights'' that interconnection customers have received for funding interconnection-related network upgrades; and (2) the value of the benefits that interconnection-related network upgrades have provided to the system, such as the value of congestion relieved by interconnection-related network upgrades. We are also interested in any other concerns related to the ''well-defined capacity rights'' that interconnection customers receive and the ability of these ''well-defined capacity rights'' to reflect the value of the full incremental capacity and congestion benefits added to the transmission system by the interconnection-related network upgrades.

ii. Revisions to the Existing Crediting Policy

131. We seek comment on possible revisions to the Order No. 2003 interconnection crediting policy, which requires that interconnection customers provide upfront funding for interconnection-related network upgrades and receive reimbursement through transmission service credits or a balloon payment after 20 years. We enumerate multiple proposals below. Not all of these proposals are mutually exclusive, and some could be implemented in tandem.

(a) Transmission Providers Provide Upfront Funding for All Interconnection-Related Network Upgrades

132. Pursuant to this potential proposal, each transmission provider would provide upfront funding for all the interconnection-related network upgrades on its transmission system. Then, once such an interconnection-related network upgrade is in service, the transmission provider would be able to include the cost of that interconnection-related network upgrade in its transmission service rate base and recover a return on, and of, the network upgrade capital costs through the cost-of-service transmission rates in its OATT. Thus, interconnection customers that take transmission service on a transmission system would still pay for a portion of interconnection-related network upgrades through transmission rates. We seek comment on (1) this approach and (2) how this approach could be implemented in a just and reasonable manner.

133. This option would reduce the initial financing burden that interconnection customers currently may encounter when significant interconnection-related network upgrades are required for their interconnection request. Furthermore, this option may increase generator competition by lowering barriers to entry, which in turn will benefit customers by creating a more competitive market for energy.

134. There may also be additional efficiency benefits to removing the crediting policy because the financing of interconnection-related network upgrades would follow the same financing process that the transmission owners apply to the other transmission infrastructure that they fund and build on their system. That is, there could be an efficiency gain from using one financing process for all transmission system facilities instead of the existing two: one for interconnection-related network upgrades and another for other transmission system facilities. In addition to that particular inefficiency, under the current crediting approach applied in non-RTO/ISO regions, each interconnection-related network upgrade is financed twice—initially by the interconnection customer and then again by the transmission provider when the interconnection customer receives credits as it takes transmission service or receives a balloon payment after 20 years. Without the initial funding by the interconnection customer, interconnection-related network upgrades would only need to be financed once.

(b) Interconnection Customers Contribute to the Upfront Funding of Interconnection-Related Network Upgrades Through a Fee

135. Another possible reform to the current crediting policy is to consider the establishment of a non-refundable fee to be charged for submitting an interconnection request and that is not reimbursable through transmission service credits. Under this approach, an appropriate fee should not be so large that it creates barriers to entry for smaller developers. Potential benefits of this type of fee could include: (1) Defraying some of the cost to transmission customers for interconnection-related network upgrades and therefore decreasing the overall impact on transmission customers of the related potential reform to eliminate participant funding of interconnection-related network upgrades in RTOs/ISOs; (2) discouraging the submission of speculative interconnection requests; and (3) for some variable fees, providing a price signal to interconnection customers that could incent efficient siting decisions where possible. We seek comment on (1) whether to impose a non-refundable, non-reimbursable fee on each submitted interconnection request and (2) how this approach could be implemented in a just and reasonable manner.

[141] *See, e.g., Interstate Power & Light Co.* v. *ITC Midwest, LLC,* 144 FERC ¶ 61,052, at P 40 (2013), *order on reh'g, clarification and compliance,* 146 FERC ¶ 61,113 (2014). *See also Sw. Power Pool, Inc.,* 127 FERC ¶ 61,283, at P 5 (2009).

136. We seek comment on two specific versions of this approach. First, we seek comment on the potential establishment of a fixed fee applied to each interconnection request, which would be the same for all interconnection requests, irrespective of the generating facility's capacity or project location. We seek comment on whether establishing a fixed fee would be appropriate and, if so, the appropriate amount of such a fee.

137. Second, we seek comment on the potential establishment of a variable fee applied to each interconnection request. The amount of the variable fee could depend upon the generating facility capacity associated with the interconnection request and/or the identified interconnection-related network upgrades. For example, the fee could be based on a percentage of the estimated interconnection-related network upgrade costs or be calculated based on the generating facility capacity and/or the voltage rating of the interconnection-related network upgrade. We seek comment on the appropriate size of this fee and the structure of the fee, if the Commission were to require one. We also seek comment on whether it is possible to use a percentage of interconnection-related network upgrade cost estimates for this fee, and if so, at which point in the generator interconnection process a transmission provider would calculate that cost.

138. Finally, we seek comment on whether such a fee should be established at the outset of the generator interconnection process, or whether an escalating fee should be imposed as the interconnection request moves through the study process. For example, a smaller fee could be required for entry into the feasibility study phase, with a larger fee for the system impact study phase and the largest fee required to enter the facilities study.[142] In this manner, speculative projects could be discouraged from entering the later stages of the generator interconnection process, while still allowing interconnection customers to use the feasibility study process as it was designed, to determine project feasibility for a broader range of project sizes and locations.

[142] These non-refundable fees would be in addition to, and distinct from, the initial deposit submitted with an interconnection request and study deposits that are applied toward an interconnection customer's interconnection study costs.

(c) Transmission Providers Provide Upfront Funding for Only Higher Voltage Interconnection-Related Network Upgrades

139. We seek comment on whether it would be appropriate to require transmission providers to fund upfront the costs of any interconnection-related network upgrade that is rated at or above a certain voltage threshold. Interconnection customers would be responsible for upfront funding the cost of interconnection-related network upgrades below that threshold and be reimbursed through transmission service credits pursuant to the crediting policy.

140. Because higher voltage transmission facilities tend to produce greater and broader benefits to transmission systems than lower voltage transmission facilities, this option may better satisfy the requirement that the allocation of costs be at least roughly commensurate with the distribution of benefits.[143] Thus, where an interconnection-related network upgrade's voltage exceeds a defined threshold and is likely to produce system-wide benefits, it may be appropriate to require that transmission providers fund the costs of such interconnection-related network upgrades upfront.

141. The Commission could also adopt a modified version of this approach by requiring transmission providers to upfront fund the portion of the costs of higher voltage interconnection-related network upgrades that exceeds a pre-determined cost threshold. For example, the Commission could require transmission providers to upfront fund the costs of a 345 kV interconnection-related network upgrade that exceed $10 million. Pursuant to this modified version, in this example of a 345 kV interconnection-related network upgrade, the Commission would require the interconnection customer to fund all network upgrade costs up to $10 million and require the transmission provider to provide upfront funding for all interconnection-related network upgrade costs above the $10 million threshold. Even in this situation, however, the transmission provider would still have to provide transmission service credits to reimburse the interconnection customer for its $10 million subject to the crediting policy.

142. We note that the Commission has approved a version of this cost sharing approach in MISO, albeit in the context of responsibility for payment of interconnection-related network upgrade costs themselves and not just the upfront funding of them as discussed here. MISO's tariff provides for some cost sharing for interconnection-related network upgrades under which transmission providers recover the costs of 10% of interconnection-related network upgrades rated 345 kV and above on a system-wide basis while directly assigning through participant funding 90% of the costs of such upgrades to the interconnection customer whose interconnection required the network upgrade.[144] Furthermore, on multiple occasions, the Commission has permitted RTOs/ISOs to define different transmission facility categories and adopt different cost allocation methods for transmission facilities based on the transmission facility's voltage threshold.[145]

143. If the Commission were to split the upfront funding responsibility for interconnection-related network upgrades between the transmission provider and the interconnection customer, it may be useful to create a split based on voltage. For example, adopting an interconnection-related network upgrade voltage threshold to be funded upfront by the transmission provider has the potential to significantly reduce interconnection-related network upgrade financing costs by eliminating interconnection customers' need to fund upfront the likely more expensive higher voltage interconnection-related network upgrades. It could be appropriate to require the transmission provider to fund upfront the cost of higher voltage interconnection-related network upgrades because higher voltage transmission facilities are likely to produce greater region-wide benefits than lower voltage ones.

144. Whatever the selected voltage threshold might be, interconnection customers would still be required to upfront fund the costs of interconnection-related network upgrades (subject to the crediting policy) that do not meet that threshold. Thus, the selection of a voltage threshold would necessarily exclude from transmission provider upfront funding some interconnection-related network upgrades that produce regional

[143] *See, e.g., Old Dominion Elec. Coop.* v. *FERC,* 898 F.3d 1254, 1260 (D.C. Cir. 2018) (adopting Commission finding that ''high-voltage power lines produce significant regional benefits'').

[144] MISO Tariff, Attach. FF (Transmission Expansion Planning Protocol), Section III.A2.d (81.0.0).

[145] *See Midcontinent Indep. Sys. Operator, Inc.,* 172 FERC ¶ 61,095 (2020) (accepting MISO's proposal to change the qualifying voltage threshold for a certain class of project from 345 kV to 230 kV).

transmission benefits. We think it important to ensure that, if the Commission requires that transmission providers establish a voltage threshold for sharing the responsibility to fund upfront the cost of interconnection-related network upgrades, then the voltage threshold should be based upon the likelihood that interconnection-related network upgrades that meet that threshold produce more transmission benefits than interconnection-related network upgrades below that threshold. Furthermore, we recognize that there is some tension between such an approach, which would eliminate the requirement that interconnection customers upfront fund some interconnection-related network upgrades based on voltage, thus reducing the interconnection customers' financing costs only on larger interconnection-related network upgrades, and Order No. 2003's general acknowledgement that interconnection-related network upgrades, regardless of voltage or size, ''benefit all users.'' [146] Additionally, if the Commission adopted this option, in order to avoid the responsibility to upfront fund, transmission providers will have an incentive to identify a lower voltage interconnection-related network upgrade rather than identifying a higher voltage project that may be more efficient or cost-effective.

145. We seek comment on: (1) This approach; (2) the appropriate voltage threshold and any pre-determined cost threshold; and (3) how this approach could be implemented in a just and reasonable manner.

(d) Allocate the Upfront Cost of Interconnection-Related Network Upgrades on a Percentage Basis

146. We seek comment on whether to reduce the allowable percentage of interconnection-related network upgrade costs that interconnection customers must fund upfront (*i.e.,* from 100% to a lower percentage). The crediting policy would apply to the portion of the interconnection-related network upgrade costs that the interconnection customer upfront funds. To allow flexibility, we seek comment on whether an interconnection customer should have the option to elect to upfront fund 100% of the interconnection-related network upgrade if it chooses.

147. This method could benefit both the interconnection customer and the transmission provider. With the ability to provide partial to full upfront funding for interconnection-related network upgrades, interconnection customers will have the ability to retain some control over the speed of interconnection-related network upgrade construction because they will be able to provide initial funding in cases where the transmission owner does not have the funding readily on hand to pay for certain construction milestones. Transmission providers will benefit because this construct will retain the price signal to interconnection customers regarding siting decisions, as interconnection customers would still have to upfront fund (*i.e.,* finance) the costs of more expensive larger interconnection-related network upgrades associated with their interconnection requests and the costs related to financing interconnection-related network upgrades (*e.g.,* interest payments due on the loan) should increase as the costs of the interconnection-related network upgrades increase.

148. We note that adoption of the transmission planning and cost allocation reforms discussed above is likely to result in the development of regional transmission facilities intended to accommodate significant amounts of generation, and thus, has the potential to reduce the need for more extensive and costly interconnection-related network upgrades relative to those identified in the generator interconnection process at present. Thus, the adoption of this generator interconnection reform, in conjunction with the regional transmission planning and cost allocation reforms discussed above, could result in a significant reduction in interconnection customer financing costs while still maintaining a price signal for siting decisions.

149. We seek comment on: (1) This approach; (2) the appropriate percentage for the interconnection customer's upfront funding; and (3) how this approach could be implemented in a just and reasonable manner. As part of this inquiry, we are interested in hearing perspectives on the extent to which partial upfront funding by an interconnection customer may preserve or reduce the incentive for that customer to efficiently site a project. We seek comment on whether there are there other mechanisms, beyond customer upfront funding, that may incent a customer to site efficiently, and that could be adopted in conjunction with the elimination of participant funding.

iii. Additional Considerations

(a) Interconnection-Related Network Upgrade Cost Sharing

150. If the Commission does not eliminate participant funding of interconnection-related network upgrades, we seek comment regarding potential cost-sharing measures to account for the fact that later-in-time interconnection customers may accrue benefits from interconnection-related network upgrades built to accommodate a prior interconnection request. That is, if a later-in-time interconnection customer benefits from the interconnection-related network upgrades required to interconnect an earlier-in-time interconnection customer, the later-in-time interconnection customers may also be assigned a portion of those costs. The transmission provider could require the allocation of costs in proportion to the benefits that the later-in-time interconnection customers receive from network upgrades or be based on a different method, such as a percent share based on usage. To make this approach workable, the transmission provider could also dictate a point after which a later-in-time interconnection customer would be insulated from bearing the costs of a specific interconnection-related network upgrade, *e.g.,* prohibiting allocation of interconnection-related network upgrade costs to interconnection customers that enter the queue five years or more after the interconnection-related network upgrade's energization.[147] As we noted above, the Commission has previously approved tariff provisions pursuant to which earlier-in-time interconnection customers receive a form of reimbursement for the network upgrade costs from later-in-time customers.[148] We note that the sharing of costs between earlier-in-time and later-in-time interconnection customers would only apply in situations where the earlier-in-time interconnection customer was assigned any of the costs of the interconnection-related network upgrade under the participant funding framework. We seek comment on a just and reasonable method to calculate cost sharing for shared network upgrades. We also seek comment on whether to require, and the appropriate duration of, a time after which a later-in-time interconnection customer would not be

[146] Order No. 2003, 104 FERC ¶ 61,103 at P 65.

[147] For the purpose of this order, we will refer to this time period as the sunset period.

[148] *See* NYISO Tariff, attach S (Rules to Allocate Responsibility for the Cost of New Interconnection Facilities), Section 25.7.2; *see also* MISO Tariff, Attach. FF Section III.A.2.d.2 (81.0.0).

allocated the costs of an interconnection-related network upgrade.

(b) Option To Build

151. Order No. 2003 established, and Order No. 845 expanded, the interconnection customer's option to build transmission provider's interconnection facilities [149] and stand alone network upgrades.[150] In a non-RTO/ISO, if an interconnection customer elects to exercise the option to build, the interconnection customer assumes the responsibility to design, procure, and construct the transmission provider's interconnection facilities and stand alone network upgrades and is repaid by the transmission provider pursuant to the crediting policy.

152. Importantly, the option to build allows interconnection customers to have some control over their own timelines and construction schedules and potentially achieve cost savings associated with the design, procurement, and construction of the transmission provider's interconnection facilities and stand alone network upgrades. If the Commission revises the requirement that interconnection customers upfront fund all or some of the costs all of interconnection-related network upgrades, corresponding changes may be necessary to the option to build provisions as they apply to stand alone network upgrades to recognize that an interconnection customer that wants to exercise the option to build would no longer be responsible to upfront fund the full cost of those network upgrades. Therefore, we seek comment on what changes may be necessary to ensure that the option to build provisions remain just and reasonable and to retain flexibility for interconnection customers in light of the potential change to the funding policy.

(c) Interconnection Request Limit

153. We understand that a contributing factor to the interconnection queue backlog is a tendency by interconnection customers to submit multiple interconnection requests at different points of interconnection, with the intention of discovering the lowest cost location to site the generating facility (from an interconnection perspective), and then withdrawing higher-cost interconnection requests from the queue later in the process. We also understand that, absent an appropriately-sized penalty (or reasonable restriction) associated with submitting an interconnection request and then subsequently withdrawing such an interconnection request, there still may be an incentive to submit speculative interconnection requests under any of the potential interconnection reforms discussed above. Therefore, we seek comment on whether there should penalties for submitting speculative requests, how such should be defined, and whether there should be a limit on the number of interconnection requests that a developer can submit in an interconnection queue study year and how narrowly such a limit should apply (*e.g.,* by transmission provider or by transmission pricing zone). We also seek comment on how to determine a just and reasonable limit to the number of interconnection requests. Finally, we seek comment on how to address interconnection requests made by affiliated companies and whether those interconnection requests should count against the limit to the number of interconnection requests if one is imposed.

(d) Fast-Track for Interconnection of Generating Facilities Committed to Regional Transmission Facilities

154. As discussed above, we seek comment on the model established by ERCOT to construct the CREZ transmission projects. For those transmission projects to be approved, ERCOT required a certain percentage of capacity to be reserved by generation developers with existing projects, projects under construction, projects with signed interconnection agreements, or posted collateral. In the case that this model may improve the coordination between transmission planning and the development of future generation, it may become important to streamline the generator interconnection process for generating facilities that are committed to interconnecting to these transmission facilities.

155. Therefore, we seek comment on whether a fast-track generator interconnection process should be developed to facilitate interconnection of generating facilities that have firmly committed to connecting to new regional transmission facilities. An example of such a fast-track option may be to allow the transmission provider to perform a limited system impact study for only the cluster of generating facilities committed under the regional transmission planning process and to move to the facilities study without waiting for earlier studies to complete. We recognize that the timeline for transmission facility permitting and construction often far exceeds that of the generator interconnection and construction process but seek comment nonetheless on whether a faster generator interconnection process in this scenario would be beneficial.

156. We seek comment on whether such a process would constitute inappropriate ''queue jumping,'' or instead would be more appropriately viewed as an extension of the previously approved first-ready, first-served queueing practice. In this case, are generating facilities that have put up financial collateral to ensure that a regional transmission facility is constructed to serve them appropriately considered ''ready'' projects? We seek comment on the feasibility of establishing such a proposal, as well as the implications on the rest of the generator interconnection queue and on any legal challenges related to a potential ''queue jumping'' concern.

(e) Fast-Track for Interconnection of ''Ready'' Generating Facilities

157. In addition to considering a fast-track generator interconnection process for interconnection customers that have committed financially to new regional transmission facilities, we are considering whether allowing a fast-track for ''ready'' interconnection requests would remove barriers to entry for interconnection requests that have met certain readiness criteria. For example, interconnection requests for which the developer has already executed a power purchase agreement or that have been chosen in a state or utility request for proposals may be appropriately deemed more ''ready'' than projects that enter the interconnection queue without either contractual arrangement. Another

[149] Order No. 2003 defined two categories of interconnection facility: (1) Transmission provider's interconnection facilities, which refer to all facilities and equipment owned, controlled or operated by the transmission provider from the point of change of ownership to the point of interconnection, including any modifications, additions or upgrades to such facilities and equipment;'' and (2) interconnection customer's interconnection facilities, which are located between the generating facility and the point of change of ownership and which the interconnection customer must design, procure, construct, and own. *See pro forma* LGIA art. 1 (Definitions); *pro forma* LGIA art. 5.10.

[150] Order No. 2003, 104 FERC ¶ 61,103 at P 353; *Reform of Generator Interconnection Procedures and Agreements,* Order No. 845, 163 FERC ¶ 61,043, at P 85 (2018), *order on reh'g,* Order No. 845–A, 166 FERC ¶ 61,137, *order on reh'g,* Order No. 845–B, 168 FERC ¶ 61,092 (2019). Stand alone network upgrades refer to interconnection-related 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.'' *See pro forma* LGIP Section 1 (Definitions).

example of an interconnection request that demonstrates a higher degree of readiness could be one sited at a previously developed point of interconnection that can make use of existing interconnection facilities. Such interconnection requests may be considered more ready because they have more ready access to the transmission system. Both of these examples could be considered more ready than interconnection requests proposed at points of interconnection where the interconnection customer or the transmission provider must acquire new rights-of-way, permits, and agreements with landowners, or that face other obstacles to rapid development. We seek comment on which types of interconnection requests could be considered more ''ready'' and able to advance through the interconnection queue more quickly, as well as comments on the just and reasonable structure for such a fast-track option. We also seek comment on how to implement such a proposal in a manner that is not unduly discriminatory. As in the prior proposed reform, we seek comment on how to address possible concerns related to what some may consider ''queue jumping'' or whether appropriate factors may justify such measures.

(f) Grid-Enhancing Technologies

158. We seek comment on whether there is the potential for Grid-Enhancing Technologies not only to increase the capacity, efficiency, and reliability of transmission facilities, but, in so doing, also to reduce the cost of interconnection-related network upgrades.[151] In light of the potential of Grid-Enhancing Technologies, we seek comment on whether the Commission should require that transmission providers consider Grid-Enhancing Technologies in interconnection studies to assess whether their deployment can more cost-effectively facilitate interconnections. To the extent transmission providers currently consider Grid-Enhancing Technologies in the generator interconnection process, what, if any, shortcomings exist in that consideration? If the Commission were to require greater consideration of Grid-Enhancing Technologies, how should it do so? What, if any, challenges exist in establishing such a requirement and how might these challenges be addressed?

[151] Commission staff led a workshop in 2019 to explore the role, benefits, and challenges of Grid-Enhancing Technologies. FERC, *Grid-Enhancing Technologies,* Notice of Workshop, Docket No. AD19–19–000 (Sept. 9, 2019).

C. Enhanced Transmission Oversight

159. The potential for a significant investment in the transmission system in the coming years underscores the importance of ensuring that ratepayers are not saddled with costs for transmission facilities that are unneeded or imprudent. As part of this package of potential reforms, we are considering whether reforms may be needed to enhance oversight of transmission planning and transmission providers' spending on transmission facilities to ensure that transmission rates remain just and reasonable.

1. Potential Need for Reform

160. As discussed above, the electricity sector is in the midst of a fundamental transition as the generation mix shifts rapidly from largely centralized resources located close to population centers towards renewable resources located far from customers. Potential reforms to regional transmission planning and cost allocation and generator interconnection should help protect customers throughout this transition by directing planning toward the more efficient or cost-effective transmission facilities. Nevertheless, particularly in light of potential costs of new transmission infrastructure that may be needed to meet the needs of the changing resource mix, we seek comment on whether additional measures may be necessary to ensure that the planning processes for the development of new transmission facilities, and the costs of the facilities, do not impose excessive costs on consumers.

161. We seek comment on whether the relatively large investment in transmission facilities resulting from the regional transmission planning and cost allocation processes reflects the more efficient or cost-effective solutions for meeting transmission needs, including those associated with a changing resource mix. The transparency with which transmission needs are identified and transmission facilities approved is an important element in ensuring that excessive costs are not being imposed on consumers. Although Order No. 890 requires that transmission planning processes comply with the transmission planning principles, including transparency and openness, transmission providers comply with those requirements in various ways.

162. We seek comment on whether the current transmission planning processes provide sufficient transparency for stakeholders to understand how best to obtain information and fully participate in the various processes. For example, we seek comment whether in non-RTO/ISO regions individual transmission owning members' local transmission planning processes may not be as well publicized or follow as well understood processes to provide information as in RTO/ISO regions. We seek comment on whether this may result in material costs being imposed on consumers with limited visibility into the actual need for a local transmission facility or support for a specific local transmission solution. We also seek comment on whether, in light of the significant potential costs of transmission and this potential deficit in transparency, customers and other stakeholders might benefit from enhanced oversight over identification and costs of transmission facilities.

2. Potential Reforms and Request for Comment

a. Independent Transmission Monitor

163. We seek comment on which potential measures the Commission could take to ensure that there is appropriate oversight over how new regional transmission facilities are identified and paid for. For example, we seek comment on whether, to improve oversight of transmission facility costs, it would be appropriate for the Commission to require that transmission providers in each RTO/ISO, or more broadly, in non-RTO/ISO transmission planning regions, establish an independent entity to monitor the planning and cost of transmission facilities in the region.

164. We seek comment on the Commission's authority to require an independent entity to monitor transmission spending in each transmission planning region, as well as the role that such monitor(s) would play. For example, this independent transmission monitor might potentially review transmission planning processes, planning criteria that lead to the identification of particular transmission needs and facilities, as well as the rules and regulations governing such processes. Additionally, the independent transmission monitor could review transmission provider spending on transmission facilities and identify instances of potentially excessive transmission facility costs, including through inefficiencies between local and regional transmission planning processes. Further, the independent transmission monitor could identify instances in which transmission facilities were selected in the regional transmission plan for cost allocation when it may not be clear that such projects were the more efficient or

cost-effective transmission solutions, or were approved for regional cost allocation when credible less-costly alternatives were available. If the independent transmission monitor identifies such examples, it could make a referral to the Commission. The Commission could then conduct a review of the relevant transmission planning processes and/or transmission facility costs under section 206 of the FPA. We seek comment on the proposal outlined in this paragraph.

165. We seek comment on whether the independent transmission monitor's review could potentially focus on the transmission planning process and costs of transmission facilities before construction starts.[152] We seek comment on whether and how the Commission might modify the regional transmission planning and cost allocation processes or rate recovery rules and procedures so as to facilitate such up-front review.

166. We also seek comment on how an independent transmission monitor could approach cost oversight. One possible method would be to scrutinize the relevant regional transmission plan(s) to determine whether a different portfolio of local and regional transmission facilities would lead to higher net benefits. With regard to individual transmission facilities selected via the regional transmission planning processes or chosen through the local transmission planning processes, the independent entity could provide information to assist the Commission in determining whether the selection of a given transmission facility warrants additional Commission review. Such assistance may include the development of independent cost estimates for transmission facilities. Given the challenges of reviewing all transmission facilities, we seek comment on whether it would be useful for the Commission or the independent entity to develop criteria (such as a minimum spending threshold) to determine which transmission facilities should be subject to review.

167. We seek comment on tools that could be developed to assist such a transmission monitor or the Commission in reviewing transmission-related spending. For example, such a monitor might develop benchmark cost estimates that would be independent of cost estimates developed by a transmission provider, which could serve as a mechanism to assess performance for each transmission provider for the applicable transmission facilities. The independent transmission monitor could create separate estimates for regional versus local transmission facilities and classify facility costs by criteria (such as voltage level), with estimates based on well-established methods using the best information available just prior to the start of construction to minimize the error in cost estimation. The Commission could then review the costs for transmission facilities that significantly exceed the cost estimates, either sua sponte or on the recommendation of the independent transmission monitor or a third party. An independent transmission monitor could also seek information from transmission providers regarding the variances between actual and estimated costs for selected regional transmission facilities and use this information in its assessment of whether further Commission review is recommended.

168. We seek comment on whether an independent transmission monitor should provide advice on the design and implementation of the regional transmission planning and cost allocation processes in addition to oversight of the regional transmission planning process and the costs of the development of individual transmission facilities. The independent transmission monitor could review the design of the regional transmission planning and cost allocation processes on an ongoing basis and highlight areas where improvements could be made (for example, optimization between local and regional transmission planning). The independent transmission monitor could also review mechanisms used in transmission planning processes, such as adjusted production cost modeling tools, and assess the extent to which modifications to such mechanisms might yield more efficient transmission spending decisions.

169. The independent transmission monitor could also identify and report on situations in which non-wires alternatives could more cost-effectively address transmission system needs. We seek comment on the value of such reporting and whether such information could improve the ability for states to participate in the regional transmission planning process and provide a greater opportunity for input. Similarly, we seek comment on whether an independent transmission monitor or other oversight mechanism should evaluate and report on transmission providers' consideration of Grid-Enhancing Technologies in the transmission planning process. If so, how should that evaluation be conducted and what information should be reported?

170. Additionally, we seek comment on whether oversight of the planning and approval of local transmission facilities is necessary to ensure that transmission rates are just and reasonable. We seek comment on whether an independent transmission monitor should evaluate whether the transmission needs identified in the local transmission planning processes could be better considered during regional transmission planning processes to allow for the identification of more efficient or cost-effective transmission solutions. In addition, we seek comment on whether oversight should consider the development and application of transmission planning criteria. Finally, we encourage commenters to identify any other factors that they believe the Commission should consider for oversight within the local transmission planning process. At the same time, we seek comment on whether such a role for a federally-regulated regional transmission monitor would improperly or inappropriately expand the role of federal regulation over local utility regulation and/or potentially increase administrative and legal costs of local transmission planning with no commensurate benefits for customers. More broadly, we seek comment on whether there is a need to delineate more clearly the oversight roles of federal and state regulators over local transmission planning.

171. In addition, we seek comment on whether there is sufficient clarity on the roles and responsibilities between state and federal regulators regarding the local transmission planning criteria and the development of local transmission facilities (*e.g.,* ''Supplemental Projects'' in PJM). We seek comment on whether such transmission facilities require additional oversight and whether

[152] This is different than the safeguards provided under the transmission formula rate protocols that have been implemented for formula rates in transmission providers' OATTs. The transmission formula rate protocols are generally designed to provide interested parties sufficient opportunity to obtain and review information necessary to evaluate the implementation of the formula rate, which allows public utilities to recover the cost for transmission facilities that are already constructed and placed in service, except in limited circumstances (*e.g.,* a transmission provider may recover a return on costs of plant that is in the process of construction by receiving regulatory approval to include such costs of construction work in progress in rate base under its formula rate). The protocols outline the process for the annual formula rate informational filing at the Commission, transparency around the transmission formula rate information exchange, the scope of participation, and the ability of customers to challenge transmission providers' implementation of the formula rate. *See Midwest Indep. Transmission Sys. Operator, Inc.,* 139 FERC ¶ 61,127 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.,* 143 FERC ¶ 61,149 (2013); *Midcontinent Indep. Sys. Operator, Inc.,* 146 FERC ¶ 61,212 (2014); *Midcontinent Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,025 (2015).

additional coordination among state and federal regulators would be beneficial. Similarly, we seek comment on whether and how greater oversight may improve coordination between individual transmission provider's planning processes and regional transmission planning processes. Order No. 1000 requires the evaluation of ''alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers.'' [153] We seek comment on whether current rules and processes are adequately aligned with and facilitate such consideration or evaluation, and if not, whether there are oversight measures or other mechanisms, including via an independent transmission monitor, that could better facilitate the consideration of more efficient or cost-effective alternatives. For example, we seek comment on whether individual transmission provider practices regarding retirement and replacement of transmission facilities sufficiently align with the directive to ensure evaluation of alternative transmission solutions and whether these practices sufficiently consider the more efficient or cost-effective ways to serve future needs. We also seek comment on whether sufficient transparency exists in retirement decisions to allow for such regional assessment. We seek comment on what role can or should an independent transmission monitor play in facilitating enhanced coordination.

172. Furthermore, we seek comment on whether additional transparency measures are appropriate or should be in place for transmission providers, including those outside of RTO/ISO regions. If so, we seek comment on whether the Commission should apply transparency measures, some of which are currently utilized within RTO/ISO regions (*e.g.,* dedicated transmission planning web pages, requirements to publish and detail full transmission plan at end of each transmission planning cycle, scorecards), or consider different or new transparency measures for transmission providers outside of RTO/ISO regions. We seek comment on whether new or different transparency measures are needed within the RTO/ISO regions.

173. An independent transmission monitor would not replace the Commission's rate jurisdiction but instead could provide the Commission with an additional means of ensuring that rates are just and reasonable. With respect to other aspects of prudence, or transmission facility selection against alternatives, the independent transmission monitor would not supplant the Commission's authority with respect to prudence, but could inform the Commission as to whether a further review is warranted; the final determination on whether costs are prudently incurred remains with the Commission. Similarly, the record created by the independent transmission monitor could help the Commission in ensuring that the design of the regional transmission planning and cost allocation processes remain just and reasonable and not unduly discriminatory or preferential.

174. We seek comment on (1) the independent transmission monitor proposal, and (2) any alternative options for improving oversight of transmission costs or the effectiveness of transmission planning processes. Additionally, we seek comment on whether the concerns regarding transmission oversight are best addressed by an independent entity similar to the role of an independent market monitor, or whether the concerns can be adequately addressed by the RTO/ISO or transmission providers in non-RTO/ISO regions, or through another approach.

175. We also seek comment on (1) how an independent transmission monitor (or set of regional monitors) would be created or authorized; (2) whether a single monitor should be appointed for each transmission region, or instead a given monitor might review transmission across several regions; (3) the Commission's authority to require an independent transmission monitor in all transmission planning regions; (4) how this entity would work in practice, in both the RTO/ISO and non-RTO/ISO regions; and (5) the scope of review such monitor(s) should be charged with carrying out, including whether such monitoring should extend to oversight of the generator interconnection process.

b. State Oversight

176. Another way to add oversight to the transmission planning and cost allocation processes could be to involve state commissions in those processes. By way of example, SPP has a Regional State Committee (RSC), which provides collective state regulatory agency input in areas under the RSC's primary responsibilities and on matters of regional importance related to the development and operation of the bulk electric transmission system. Pursuant to the SPP Bylaws, ''with respect to transmission planning, the RSC will determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process.'' [154]

177. We seek comment on whether this type of model, or other models that may be proposed, could be expanded to other regions and other topics; for example, whether a state-led committee could: Provide insight into regional transmission facility costs and cost allocation methods; evaluate whether the transmission needs identified in the local transmission planning processes could be better considered during regional transmission planning processes; inform the Commission as to whether a further review is warranted of whether incurred costs are prudent; or provide the Commission with an additional means of ensuring that rates are just and reasonable. We also seek comment on how such a model may be combined with other oversight tools or mechanisms explored herein. For example, given state regulatory authority over the approval of non-wires solutions, can or should a regional state committee play a role in identifying circumstances under which a non-wires solution would be the more efficient or cost-effective solution to solving an identified regional transmission need, and facilitating a process by which the relevant state regulator could be given an opportunity to approve such a solution?

c. Limitation on Recovery of Costs for Abandoned Projects

178. There is always a risk that once approved, a regional project may be abandoned before going into service for a variety of reasons including a failure to obtain all necessary state and federal approvals, including, for example, state certificates of public convenience and necessity. The Commission's general policy for recovery of the costs of abandoned plant under section 205 of the FPA allows recovery of and return on 50% of the prudently incurred investment costs incurred in connection with the abandoned plant.[155] In

[153] Order No. 1000, 136 FERC ¶ 61,050 at P 148.

[154] SPP, Governing Documents Tariff, Bylaws, Section 7.2 (Regional State Committee) (1.0.0).

[155] *New Eng. Power Co.,* Opinion No. 295, 42 FERC ¶ 61,016, at 61,081–82, *order on reh'g,* Opinion No. 295–A, 43 FERC ¶ 61,285 (1988). The Commission also allows recovery under section 205 of return on 50% of investment costs incurred to construct transmission facilities (and other non-pollution control plant) through the inclusion of Construction Work in Progress (CWIP) in rate base during the construction period, provided certain conditions are met. *Construction Work In Progress*

Continued

addition, the Commission may grant as an incentive under section 219 of the FPA for transmission facilities meeting the qualifications for the incentive, recovery of 100% of prudently-incurred costs related to such facilities if they are abandoned for reasons beyond the control of the transmission owner.[156] In light of potential costs of new regional transmission infrastructure and the corresponding risk that some of those projects may be abandoned, we seek comment on whether the Commission should revisit its policies regarding abandoned plant to better protect consumers from increased costs due to never-built transmission facilities.

179. For example, one proposal to protect consumers would be to limit the recovery of costs through abandonment by allowing only the recovery of some portion of actual development or pre-commercial costs, and/or no recovery of a return on equity on such costs prior to the project receiving all necessary regulatory approvals. We therefore seek comment on this or other proposals to limit the amount that can be recovered for regional transmission facilities that are abandoned prior to going into service. Commenters are, of course, welcome to address all issues and concerns pertinent to such proposals.

d. Additional Oversight Approaches

180. Finally, we seek comment on additional oversight approaches the Commission might take to ensure that wholesale transmission spending is cost effective. For example, performance-based regulation. We ask how performance-based regulation may be designed to ensure that rates are just and reasonable, ensure reliability of the transmission system, promote regional expansion of transmission facilities for a sufficiently wide range of future scenarios, including anticipated future generation, and encourage transmission provider participation.

D. Transition

181. To implement any of the proposals outlined above, transmission providers must transition to new interconnection pricing paradigms and new regional transmission planning and cost allocation processes. Therefore, we seek comment on appropriate transition plans, including treatment of interconnection customers in the various stages of the generator interconnection process and those that have already interconnected as well as when the more holistic regional transmission planning and cost allocation processes would begin (including when the broader category of regional transmission facilities would be established).

182. The Commission also seeks input as to the length of time that might be necessary to implement any reforms that result from this process. Specifically, the Commission requests input as to how much time transmission providers might need to develop compliance filings related to all of the proposals in this ANOPR.

V. Comment Procedures

183. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are October 12, 2021 and Reply Comments are due November 9, 2021. Comments must refer to Docket No. RM21–17–000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters

184. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *https://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

185. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VI. Document Availability

186. 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 (*https://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

187. From the Commission's Home Page on the internet, this information is available in its eLibrary. The full text of this document is available in the 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.

188. 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.*

By direction of the Commission. Chairman Glick and Commissioner Clements are concurring with a joint separate statement attached. Commissioner Chatterjee is not participating. Commissioner Danly is concurring with a separate statement. Commissioner Christie is concurring with a separate statement.

Issued: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

Department of Energy

Federal Energy Regulatory Commission

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection

Docket No. RM21–17–000

GLICK, Chairman, CLEMENTS, Commissioner, *concurring:*

1. The generation resource mix is changing rapidly. Due to a myriad of factors—including improving economics, customer and corporate demand for clean energy, public utility commitments and integrated resource plans, as well as federal, state, and local public policies—renewable resources in particular are coming online at an

for Public Utilities; Inclusion of Costs in Rate Base, Order No. 298, 48 FR 24,323 (June 1, 1983), FERC Stats. & Regs. ¶ 30,455, *order on reh'g,* Order No. 298–A, 48 FR 46,012 (Oct. 11, 1983), FERC Stats. & Regs., ¶ 30,500 (1983), *order on reh'g,* Order No. 298–B, 48 FR 55,281 (Dec. 12, 1983), FERC Stats. & Regs. ¶ 30,524 (1983) (Order No. 298).

[156] *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 116 FERC ¶ 61,057, *order on reh'g,* Order No. 679–A, 117 FERC ¶ 61,345 (2006), *order on reh'g,* 119 FERC ¶ 61,062 (2007).

unprecedented rate.[1] As a result, the transmission needs of the electricity grid of the future are going to look very different than those of the electricity grid of the past.

2. We are concerned that the current approach to transmission planning and cost allocation cannot meet those future transmission needs in a manner that is just and reasonable and not unduly discriminatory or preferential. In particular, we believe that the *status quo* approach to planning and allocating the costs of transmission facilities may lead to an inefficient, piecemeal expansion of the transmission grid that would ultimately be far more expensive for customers than a more forward-looking, holistic approach that proactively plans for the transmission needs of the changing resource mix. A myopic transmission development process that leaves customers paying more than necessary to meet their transmission needs is not just and reasonable.

3. In that regard, we are pleased to see the Commission taking a consensus first step toward updating its rules and regulations to ensure that we are meeting the nation's evolving transmission needs in a cost-effective and efficient fashion. Today's action complements our recently established joint federal-state task force with the National Association of Regulatory Utility Commissioners,[2] which we expect to produce a robust dialogue on many of the issues addressed herein. In our view, this advance notice of proposed rulemaking (ANOPR) is just the first step. Ensuring that transmission rates remain just and reasonable will require further action, including reforms to interregional transmission planning and cost allocation, as well as other reforms to our regional transmission planning and cost allocation and generator interconnection processes beyond those contemplated herein. Nevertheless, we believe that today's unanimous Commission action represents a solid foundation for an expeditious inquiry into how we can regulate to achieve the transmission needs of our changing electricity system in a manner consistent with our statutory obligations under the Federal Power Act.

* * * * *

4. The generation mix is shifting rapidly from large resources located close to population centers toward renewable resources, often combined with onsite storage, that tend to be located where their fuel source is best—*i.e.,* where the wind blows hardest or the sun shines brightest. According to the National Renewable Energy Laboratory (NREL), total renewable generation capacity nearly doubled from 2009 to 2018, increasing from 11.7% of total generation capacity to 20.5%.[3] And that is just the beginning: Of the roughly 750 GW of generation in interconnection queues around the country, nearly 700 GW are renewable resources,[4] providing every reason to believe that the dramatic shift toward renewable generation will only accelerate in the years ahead.

5. That shift is the result of many factors. First and foremost, the cost of renewable resources is plummeting. For example, in its annual report on the levelized cost of energy, Lazard found that between 2009 to 2020, the levelized cost of energy from unsubsidized wind generation and unsubsidized utility-scale solar generation decreased by 71% and 90%, respectively[5]—enough to make utility-scale solar and wind generation cost-competitive with central station fossil generation sources in many parts of the country.[6] Moreover, customers—both residential and commercial—are increasingly demanding clean energy, particularly energy from renewable resources—which is itself causing utilities and independent power producers to attempt to send large quantities of renewable energy onto the grid.[7] In addition, dozens of the biggest utilities in the country have established their own decarbonization goals, the achievement of which will require their

[1] *See, e.g.,* Joseph Rand et al., *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2020,* Lawrence Berkeley National Laboratory, May 2021, *https://eta-publications.lbl.gov/sites/default/files/queued_up_may_2021.pdf; Electric Power Monthly,* Table 6.1 Electric Generating Summer Capacity Changes (MW), U.S. Energy Information Administration, (Mar. 2021 to Apr. 2021), *https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=table_6_01.*

[2] *Joint Federal-State Task Force on Electric Transmission,* 175 FERC ¶ 61,224 (2021).

[3] *2018 Renewable Energy Data Book* at 26, NREL, *https://www.nrel.gov/docs/fy20osti/75284.pdf.* Wind and solar resources, in particular, have grown at a disproportionate rate, with solar generation capacity increasing roughly 5,000% from 1,054 MW to 51,899 MW nationwide, and wind generation capacity more than tripling from 31,155 MW to 96,442 MW.

[4] *See* Joseph Rand, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2020,* Lawrence Berkeley National Laboratory, May 2021, *https://eta-publications.lbl.gov/sites/default/files/queued_up_may_2021.pdf.* Equally important, this shift is taking place across the country, not just in a few areas. For example, as of the issuance of this ANOPR, in Midcontinent Independent System Operator, Inc. (MISO), solar and wind projects comprise 80% of all active projects in the current interconnection queue, or about 73 GW of total capacity. MISO, *Generator Interconnection Queue—Active Projects Map, https://giqueue.misoenergy.org/PublicGiQueueMap/index.html.* Similarly, in PJM Interconnection, L.L.C. (PJM), solar and wind projects with a total capacity of 62 GW comprise 79% of all active projects in the current interconnection queue as of the issuance of this ANOPR. PJM, *New Services Queue, https://www.pjm.com/planning/services-requests/interconnection-queues.aspx.* In California Independent System Operator Corporation (CAISO), renewable and storage capacity of 23 GW comprise 78% of all active projects in the current interconnection queue as of the issuance of this ANOPR. CAISO, *Generator Interconnection Queue, https://www.caiso.com/Documents/ISOGeneratorInterconnectionQueueExcel.xls.*

[5] *See, e.g., Lazard's Levelized Cost of Energy Analysis—Version 14.0,* at 9 (Oct. 19, 2020), *https://www.lazard.com/perspective/levelized-cost-of-energy-and-levelized-cost-of-storage-2020/#:~:text=Lazard's%20latest%20annual%20Levelized%20Cost,build%20basis%2C%20continue%20to%20maintain*; Ryan Wiser et al., *Expert elicitation survey predicts 37% to 49% declines in wind energy costs by 2050,* Lawrence Berkeley National Laboratory (Apr. 2021), *https://eta-publications.lbl.gov/sites/default/files/wind_lcoe_elicitation_ne_pre-print_april2021.pdf* (finding that the decrease in levelized cost of energy for wind power from 2015–2020 outpaced the decrease predicted by experts, and that experts continue to predict significant declines in levelized cost of energy).

[6] *See Lazard's Levelized Cost of Energy Analysis—Version 14.0,* at 3, 7 (Oct. 19, 2020), *https://www.lazard.com/perspective/levelized-cost-of-energy-and-levelized-cost-of-storage-2020/#:~:text=Lazard's%20latest%20annual%20Levelized%20Cost,build%20basis%2C%20continue%20to%20maintain.*

[7] *See, e.g.,* Deloitte Resources 2020 Study at 22, *https://www2.deloitte.com/content/dam/insights/us/articles/6655_Resources-study-2020/DI_Resources-study-2020.pdf* (showing that U.S. corporate renewable generation purchase power agreements increased from 0.3 GW in 2009 to 13.6 GW in 2019); Kevin O'Rourke & Charles Harper, *Corporate Renewable Procurement and Transmission Planning: Communicating Demand to RTOs Necessary to Secure Future Procurement Options,* A Renewable America (October 2018), *https://acore.org/wp-content/uploads/2020/04/Corporates-Renewable-Procurement-and-Transmission-Report.pdf* (indicating that a group of corporations, forming the Renewable Energy Buyers Alliance, has set a goal to purchase 60 GW of new renewable energy capacity in the U.S. by 2025); Stanley Porter et al., *Utility Decarbonization Strategies, Renew, Reshape, and Refuel to Zero,* Deloitte Insights (Sept. 2021), *https://www2.deloitte.com/us/en/insights/industry/power-and-utilities/utility-decarbonization-strategies.html* (indicating that 43 of 55 utilities surveyed have emissions reductions targets and 22 have net-zero or carbon-free electricity goals); Esther Whieldon, *Path to net zero: 70% of biggest US utilities have deep decarbonization targets,* S&P Global Market Intelligence (Dec. 9, 2020) at 3–6, *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/path-to-net-zero-70-of-biggest-us-utilities-have-deep-decarbonization-targets-61622651* (indicating that review of utilities' climate goals decarbonization plans, as of December 2020, shows that 70% of the 30 largest utilities have net-zero carbon targets or are moving to comply with similarly aggressive state mandates); *see also* Rich Glick and Matthew Christiansen, *FERC and Climate Change,* 40 Energy L.J. 1, 7–12 (2019) (''The growth of renewable resources is also a function of consumers' desire for clean energy. Customers—including residential, commercial, and even industrial consumers—are increasingly demanding that their energy come from renewable or zero-emissions sources'').

own significant investment in renewable generation.[8]

6. Finally, federal, state, and local policymakers have adopted a range of public policies that are driving the changing resource mix. For example, 30 states and the District of Columbia have adopted renewable portfolio standards,[9] with those standards contributing to roughly 50% of the total growth in renewable generation over the last two decades.[10] In addition, several states have doubled down on the clean energy transition by enacting measures that require that most or all of their electricity come from zero emissions resources.[11] All told, ''states and utilities that have committed to transitioning to 100 percent clean power serve nearly 83 million households and businesses, representing around 50 percent of all U.S. electricity demand in 2019.'' [12]

7. Dramatic changes in the resource mix inevitably come with similarly dramatic changes in transmission needs. As noted, the increasingly cost-competitive renewable resources that customers and public policies demand tend to be developed farther away from customers where their fuel sources are strong and development costs are low rather than in close proximity to their ultimate customers. As a result, the future resource mix will likely present new transmission needs, different from those of the large resources located close to population centers that have dominated electricity generation in the past. Meeting those transmission needs will likely require both the infrastructure necessary to interconnect new resources to the transmission system efficiently and the infrastructure necessary to reliably move the electricity produced by those resources to where it is needed. This could make it considerably more expensive than necessary to bring in the low-cost generation demanded by customers and meet federal, state, and local public policies.

8. This Commission cannot sit idly by. Our role is to ensure just and reasonable rates and support reliability in light of changes in the market, not to pretend those changes are not happening. We are concerned that, in light of evolving transmission needs, the current regional transmission planning and cost allocation and generator interconnection processes may no longer ensure just and reasonable rates for transmission service.[13] In particular, we are concerned that existing regional transmission planning processes may be siloed, fragmented, and not sufficiently forward-looking, such that transmission facilities are being developed through a piecemeal approach that is unlikely to produce the type of transmission solutions that could more efficiently and cost-effectively meet the needs of the changing resource mix. Regional transmission planning processes generally do little to proactively plan for the resource mix of the future, including both commercially established resources, such as onshore wind and solar, as well as emerging ones, such as offshore wind. We are also concerned that current regional transmission planning processes are not sufficiently integrated with the generator interconnection processes, and are overwhelmingly focused on relatively near-term transmission needs, and that attempting to meet the needs of the changing resource mix through such a short-term lens will lead to inefficient transmission investments. As a result, under the *status quo,* customers could end up paying far more to meet their transmission needs than they would under a more forward-looking approach that identifies the more efficient or cost-effective investments in light of the changing resource mix.[14]

9. Relatedly, we are also concerned that the current approach to transmission planning and cost allocation is failing to adequately identify the benefits and allocate the costs of new transmission infrastructure. Although the regional transmission planning process considers transmission needs driven by reliability, economics, and Public Policy Requirements,[15] those transmission needs are often viewed in isolation from one another and the cost allocation methods for projects selected to meet those needs are similarly siloed. As a result, the *status quo* may be disproportionately producing transmission facilities that address a narrow set of needs, providing comparatively modest benefits, but at a still-substantial total cost instead of developing the type of transmission infrastructure that could provide the most significant benefits for customers. In the same vein, we are also concerned that many customers who share in the diverse array of benefits that transmission infrastructure can offer may not be paying their fair share, as required by the cost causation principle.[16]

10. In addition, we are concerned that, largely due to the potential shortcomings with the current regional transmission planning and cost allocation processes, transmission infrastructure is increasingly being

[8] *See, e.g., Corporate Renewable Procurement and Transmission Planning: Communicating Demand to RTOs Necessary to Secure Future Procurement Options,* A Renewable America, October 2018, *https://acore.org/wp-content/uploads/2020/04/Corporates-Renewable-Procurement-and-Transmission-Report.pdf;* Esther Whieldon, *Path to net zero: 70% of biggest US utilities have deep decarbonization targets,* S&P Global Market Intelligence, Dec. 9, 2020, at 3–6, *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/path-to-net-zero-70-of-biggest-us-utilities-have-deep-decarbonization-targets-61622651.*

[9] Nat'l Conference of State Legislatures, *State Renewable Portfolio Standards and Goals* (Nov. 7, 2021), *https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx#:~:text=Thirty%20states%2C%20Washington%2C%20DC%2C,have%20set%20renewable%20energy%20goals.* Renewable portfolio standards are policies that are designed to increase the amount of renewable energy sources used for electricity generation.

[10] *See, e.g.,* Berkeley Lab, *U.S. Renewables Portfolio Standards: 2019 Annual Status Update* (Aug. 2019), *https://emp.lbl.gov/publications/us-renewables-portfolio-standards-2.*

[11] *Carbon Pricing in Organized Wholesale Elec. Markets,* 175 FERC ¶ 61,036, at P 2 (2021) (''Thirteen states—California, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington—and the District of Columbia have adopted clean energy or renewable portfolio standards of 50% or greater.''). In addition, ''a number of states—including Colorado, Connecticut, Nevada, Rhode Island, and Wisconsin—have established 100% clean electricity goals or targets by executive order or other non-binding commitment.'' *See id.* At the local level, cities and counties are also accelerating clean energy commitments. Kelly Trumbull *et al., Progress Toward 100% Clean Energy in Cities and States Across the U.S.,* University of California—Los Angeles Luskin Center for Innovation (November 2019) at 10, *https://innovation.luskin.ucla.edu/wp-content/uploads/2019/11/100-Clean-Energy-Progress-Report-UCLA-2.pdf* (finding over 200 cities and counties across 37 U.S. states have 100 percent clean energy commitments).

[12] National Resources Defense Council (NRDC), *NRDC's 8th Annual Energy Report: Slow and Steady Will Not Win the Climate Race* (Dec. 2, 2020), *https://www.nrdc.org/resources/nrdcs-8th-annual-energy-report-slow-and-steady-will-not-win-race?nrdcpreviewlink=rmmB6NM6zpiOTruhuObZJdH92bCOvmZTY1hx72xCSzQ#renewables.*

[13] 16 U.S.C. 824e.

[14] *See generally* Eric Larson *et al., Net-Zero America: Potential Pathways, Infrastructure, and Impact* (2020), *Princeton_NZA_Interim_Report_15_Dec_2020_FINAL.pdf* (discussing different pathways for meeting decarbonization goals, including differing approaches to transmission investment).

[15] *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC ¶ 61,051, at P 11 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132, *order on reh'g and clarification,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[16] *Cf. BNP Paribas Energy Trading GP* v. *FERC,* 743 F.3d 264, 268–269 (D.C. Cir. 2014) (''[T]he cost causation principle itself manifests a kind of equity. This is most obvious when we frame the principle (as we and the Commission often do) as a matter of making sure that burden is matched with benefit.'' (*citing Midwest ISO Transmission Owners* v. *FERC,* 373 F.3d 1361, 1368 (D.C. Cir. 2004) *and Se. Michigan Gas Co.* v. *FERC,* 133 F.3d 34, 41 (D.C. Cir. 1998))).

developed through the generator interconnection process. That means that infrastructure with potentially significant benefits for a broad range of entities may be developed through a process that focuses exclusively on the needs of a comparatively small number of interconnection customers—a dynamic that is almost sure to result in comparatively inefficient investment decisions. The participant funding approach to financing interconnection-related network upgrades will often mean that the interconnection customer(s) alone must pay for all—or the vast majority—of the costs of that transmission infrastructure, even where it provides significant benefits to other entities. That, in turn, may cause those interconnection customers to withdraw projects from the queue, causing considerable uncertainty and delay, and may mean that net beneficial transmission infrastructure is never developed due to a misalignment in how that infrastructure would be paid for.

11. Finally, we are also concerned that the Commission's current approach to overseeing transmission investment may not adequately protect consumers. While transmission infrastructure can provide a broad spectrum of benefits, it is itself a significant investment that represents a major component of customers' electric bills. The Commission must vigorously oversee the rules governing how transmission projects are planned and paid for if we are to satisfy our responsibility to protect customers from excessive rates and charges.[17] The potential bases for invigorating our oversight of transmission spending contemplated in today's order have the potential to go a long way toward ensuring that we fulfill that function.

12. Today's action plants the seeds for addressing the concerns outlined above. A forward-looking, holistic approach to transmission planning has the potential to identify the more efficient or cost-effective solutions for meeting the transmission needs of the changing resource mix, including those resources that are not yet under development. Such an approach would allow transmission planners to proactively identify the areas of the transmission grid that will have significant transmission needs and select the more efficient or cost-effective solution to meet those needs, including needs driven by resources that are not yet in operation or even under development. Doing so has the potential to address the transmission needs of the future generation mix while costing customers considerably less than they would pay to meet those same needs under the *status quo.* That, in our view, is what is necessary to ensure that the rates for transmission service remain just and reasonable as the resource mix changes.

13. We anticipate that this effort will be the Commission's principal focus in the months to come. In addition to reviewing the record assembled in response to today's order, we intend to explore technical conferences and other avenues for augmenting that record—including through the joint federal-state task force [18]—before proceeding to reform our rules and regulations. We recognize that the issues addressed herein are highly technical, complex problems that do not lend themselves to easy solutions. That being said, we also recognize the urgent need to address the transmission needs of the changing resource mix and appreciate that we do not have the luxury of sitting back and debating these issues *ad nauseum.*

* * * * *

14. The electricity sector is at a pivotal moment. With the clean energy transition gaining steam, we can either continue with the *status quo,* trying to meet the transmission needs of the future by building out the grid in a myopic, piecemeal fashion, or we can start holistically and proactively planning for those future transmission needs. We believe that today's advance notice of proposed rulemaking represents an important and essential first step in the right direction and toward the type of transmission planning and cost allocation paradigm that is necessary to protect customers, support reliability, and ensure just and reasonable rates.

For these reasons, we respectfully concur.

Richard Glick,

Chairman.

Allison Clements,

Commissioner.

[17] *Cf., e.g., California ex rel. Lockyer* v. *FERC,* 383 F.3d 1006, 1017 (9th Cir. 2004) (rejecting ''an interpretation [that] comports neither with the statutory text nor with the Act's 'primary purpose' of protecting consumers''); *City of Chicago* v. *FPC,* 458 F.2d 731, 751 (D.C. Cir. 1971) (''[T]he primary purpose of the Natural Gas Act is to protect consumers.'' (citing, *inter alia, City of Detroit* v. *FPC,* 230 F.2d 810, 815 (D.C. Cir. 1955)).

[18] *See supra* n.2.

Department of Energy

Federal Energy Regulatory Commission

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection

Docket No. RM21–17–000

(Issued July 15, 2021)

DANLY, Commissioner, *concurring:*

1. I concur with the issuance of this Advance Notice of Proposed Rulemaking (ANOPR) because the Commission is always entitled to solicit comments on possible changes to existing rules and a number of the questions raised here are worthy of consideration.

2. I write separately to highlight one overarching concern. The ANOPR poses several questions where the answer is ''no.'' Many of the contemplated proposals would exceed or cede our jurisdictional authority, violate cost causation principles, create stifling layers of oversight and ''coordination,'' trample transmission owners' rights, force neighboring states' ratepayers to shoulder the costs of other states' public policy choices, treat renewables as a new favored class of generation with line-jumping privileges, and perhaps inadvertently lead to much less transmission being built and at much greater all-in cost to ratepayers.

3. There are obviously problems with the existing transmission regime. I, for example, have long been troubled by interconnection logjams and have wondered whether we are needlessly propping up fantasy projects while viable projects get lost in the crowd.[1] This is but one example; there are any number of other critical transmission planning reforms that bear investigation.

4. My hope therefore is that commenters will supply us with a full record on each issue raised in the ANOPR: Whether and why the existing rule works or not, and whether and why the possible reform may work or not. With every proposed change, I specifically solicit comments on two subjects. *First:* Is the contemplated reform a proper exercise of the Commission's authority, *i.e.,* is it within our jurisdiction? That is always the threshold question before we turn to policy. *Second:* what will be the ultimate effect on ratepayers? I fear that in the enthusiasm to build transmission, many may tout the benefits of new transmission while overlooking the costs that will eventually be borne by ratepayers. No proposed policy,

[1] *See, e.g., PacifiCorp,* 171 FERC ¶ 61,112 (2020) (Danly, Comm'r, concurring).

however worthy, can evade our statutory duty to ensure that rates are just and reasonable.

5. I encourage everyone with an interest to file. I look forward to learning from the parties that submit comments and to engaging with my colleagues to consider whether there are legally durable, economically sound reforms that we might consider to improve the reliability of the transmission system at just and reasonable rates.

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

Department of Energy

Federal Energy Regulatory Commission

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection

Docket No. RM21–17–000

(Issued July 15, 2021)

CHRISTIE, Commissioner, *concurring:*

1. I concur with today's ANOPR because approximately ten years after the Commission issued Order No. 1000, it is appropriate to review the implementation of that order, assess the successes and problems that have become evident over the past decade, and consider reforms and revisions to existing regulations governing regional transmission planning and cost allocation. This consideration of potential reforms is especially timely as the transmission system faces the challenge of maintaining reliability through the changing generation mix and efforts to reduce carbon emissions.

2. The broad goal of the Commission's regulation of our nation's power grid under the Federal Power Act (FPA) is to ensure a reliable power supply to consumers, which includes residential customers as well as the businesses providing jobs for tens of millions of Americans, at just and reasonable rates. Transmission is one of the three essential elements of a reliable power system, along with generation and distribution, so continually working to make America's transmission system more reliable, more efficient, and more cost-effective is our job at FERC.

3. As with Order No. 1000, the statutory framework governing our potential actions in this proceeding remains section 206 of the FPA, which requires us to ensure that all transmission planning processes and cost allocation mechanisms subject to our jurisdiction result in jurisdictional services being provided at rates, terms and conditions that are just, reasonable, and not unduly discriminatory or preferential. Any proposals ultimately adopted by this Commission for reforms or revisions to existing regulations must be consistent with this authority.

4. As Paragraph 4 of the ANOPR makes clear,[1] we have not predetermined that any specific proposal in this ANOPR has already been or will ultimately be approved. Rather, we seek comment from all interested persons and organizations on the wide range of proposals contained herein, as well as the submission of alternative proposals. Today is the beginning of a long process and I look forward to hearing from all concerned.

5. Similarly, my concurrence to issue today's ANOPR does not represent an endorsement at this point in the process of any one or more of the proposals included in the order. This ANOPR contains a number of good proposals, some *potentially* good proposals (depending on how they are fleshed out), and frankly, some proposals that are not—and may never be—ready for prime time, or could potentially cause massive increases in consumers' bills for little to no commensurate benefit or inappropriately expand the role of federal regulation over local utility regulation. Given the early stage of this process, however, I agree it is worthwhile to submit a broad range of proposals to the public for comment in the hope that the final result will be a more reliable, more efficient, and more cost-effective transmission system.

For these reasons, I respectfully concur.

Mark C. Christie,

Commissioner.

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[1] ANOPR at P 4 (''We note that the Commission has not predetermined that any specific proposal discussed herein shall or should be made or in what final form; rather, we seek comment from the public on those proposals and welcome commenters to offer additional or alternative proposals for consideration.'').

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