

power conditions after a single or dual in-flight engine shutdown.

**(f) Compliance**

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

**(g) Definitions**

(1) For the purposes of this AD, an affected full authority digital engine control (FADEC) electronic engine controller (EEC) is one with a part number listed in table 1 to paragraph (g)(1) of this AD.

TABLE 1 TO PARAGRAPH (g)(1) OF THIS AD—AFFECTED FADEC EEC PART NUMBERS

Affected FADEC EEC part No.
5315126
5315126SK02
5323434
5323745
5323746
5324836
5324836-001
5324836-002
5324837
5325185
5325971
5325975

(2) For the purposes of this AD, Group 1 airplanes are defined as those that have an affected FADEC EEC installed.

(3) For the purposes of this AD, Group 2 airplanes are defined as those that do not have an affected FADEC EEC installed.

**(h) Modification**

*For Group 1 airplanes:* Within 30 days after the effective date of this AD, modify the airplane by replacing affected FADEC EECs installed on both engines with FADEC EEC part number 5327582 (software standard FCS4.4), or by installing software standard FCS4.4 and re-identifying the affected FADEC EEC, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-73-1128, Revision 01, dated May 17, 2018.

**(i) Parts Installation Limitation**

As of 30 days after the effective date of this AD, do not install an affected FADEC EEC on any airplane.

**(j) Later-Approved Parts**

Installation on an airplane of a FADEC EEC or software standard having a part number approved after the effective date of this AD is acceptable for compliance with the requirements of paragraph (h) of this AD, provided the conditions in paragraphs (j)(1) and (j)(2) of this AD are met.

(1) The FADEC EEC or software standard part number must be approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(2) The installation of the FADEC EEC or software standard must be accomplished in accordance with a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**(k) Clarification of Affected Airplanes**

An airplane on which Airbus modification 163473 has been embodied in production is not affected by the requirements of paragraph (h) of this AD, provided it can be conclusively determined that no affected FADEC EEC is installed on that airplane.

**(l) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320-73-1128, dated May 15, 2018.

**(m) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

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

**(n) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018-0110, dated May 18, 2018, for related information. You

may examine the MCAI on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0492.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3323.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (o)(4) of this AD.

**(o) Material Incorporated by Reference**

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

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

(i) Airbus Service Bulletin A320-73-1128, Revision 01, dated May 17, 2018.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—ELIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); internet <http://www.airbus.com>.

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

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

Issued in Des Moines, Washington, on May 23, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-11659 Filed 5-29-18; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 375 and 388**

[Docket No. RM16-15-001; Order No. 833-A]

**FAST Act Section 61003—Critical Electric Infrastructure Security and Critical Energy Infrastructure Information**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order on clarification and rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) in this order on clarification and rehearing grants in part Edison Electric Institute's request for clarification or, in the alternative, rehearing of Order No. 833, and denies rehearing of that order, which amends the Commission's regulations to implement provisions of the Fixing America's Surface Transportation Act pertaining to the designation, protection, and sharing of Critical Energy/Electric Infrastructure Information.

**DATES:** This order is effective July 30, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Nneka Frye, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6029, [Nneka.frye@ferc.gov](mailto:Nneka.frye@ferc.gov)  
Christopher MacFarlane, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6761, [Christopher.macfarlane@ferc.gov](mailto:Christopher.macfarlane@ferc.gov)  
Mark Hershfield, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8597, [Mark.hershfield@ferc.gov](mailto:Mark.hershfield@ferc.gov)

**SUPPLEMENTARY INFORMATION:**

**Order No. 833-A**

*Order on Clarification and Rehearing*  
(Issued May 17, 2018)

1. In Order No. 833, the Commission amended its regulations to implement provisions of the Fixing America's Surface Transportation Act (FAST Act)<sup>1</sup> related to Critical Electric Infrastructure Information.<sup>2</sup> In addition, Order No. 833 revised the Commission's Critical Energy Infrastructure Information regulations.<sup>3</sup> Edison Electric Institute (EEI) requested clarification or, in the alternative, rehearing of Order No. 833. For the reasons discussed below, we grant EEI's request for clarification in part and deny rehearing.

**I. Order No. 833**

2. On December 4, 2015, the FAST Act was signed into law. The FAST Act, *inter alia*, added section 215A to the

Federal Power Act (FPA) to improve the security and resilience of energy infrastructure in the face of emergencies. The FAST Act directed the Commission to issue regulations that provide: (1) The criteria and procedures for designating information as Critical Electric Infrastructure Information; (2) a specific prohibition on unauthorized disclosure of Critical Electric Infrastructure Information; (3) sanctions for the knowing and willful unauthorized disclosure of Critical Electric Infrastructure Information by Commission and Department of Energy (DOE) employees; and (4) a process for voluntary sharing of Critical Electric Infrastructure Information.<sup>4</sup>

3. On June 16, 2016, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to implement the provisions of the FAST Act pertaining to the designation, protection, and sharing of Critical Electric Infrastructure Information and to revise the existing Critical Energy Infrastructure Information regulations.<sup>5</sup> The NOPR proposed that the amended procedures be referred to as the Critical Energy/Electric Infrastructure Information (CEII) Procedures.<sup>6</sup> In response to the NOPR, nineteen entities filed comments and two entities filed reply comments.

4. On November 17, 2016, the Commission issued Order No. 833, which amended the Commission's regulations at 18 CFR 375.309, 375.313, 388.112 and 388.113 to implement the FAST Act provisions that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information. Order No. 833 also revised the existing Critical Energy Infrastructure Information regulations. The Commission determined that the amended regulations comply with the requirements of the FAST Act and better ensure the secure treatment of CEII.<sup>7</sup>

**II. Discussion**

5. EEI asserts that the Commission either erred or should reconsider five aspects of Order No. 833.<sup>8</sup> As discussed below, we grant EEI's request for clarification in part and deny EEI's request for rehearing.

*A. Requests for Access to CEII*

Order No. 833

6. The FAST Act required the Commission, taking into account standards of the Electric Reliability Organization, to facilitate voluntary sharing of Critical Electric Infrastructure Information. The statute directed the Commission to facilitate voluntary sharing with, between, and by Federal, State, political subdivision, and tribal authorities; the Electric Reliability Organization; regional entities; information sharing and analysis centers established pursuant to Presidential Decision Directive 63; owners, operators, and users of critical electric infrastructure in the United States; and other entities determined appropriate by the Commission.<sup>9</sup>

7. In Order No. 833, the Commission established procedures in its regulations for providing CEII to third parties. Specifically, in § 388.113(f), the Commission established a process for the Commission to voluntarily share CEII when there is a need to ensure energy infrastructure is protected. Separately, in § 388.113(g), the Commission revised its long-standing procedures for members of the public to request access to CEII by requiring a statement demonstrating a valid and legitimate need for the information.<sup>10</sup> Both processes contain procedures to notify submitters of the CEII of the Commission's prospective sharing of its CEII as well as a requirement that prospective CEII recipients execute Non-Disclosure Agreements (NDA).

8. The Commission also stated that the procedures do not impose a sharing requirement on entities; instead, the provisions allow the Commission to exercise discretion to share CEII that has already been submitted to, or generated by, the Commission.<sup>11</sup> Further, the Commission determined that even if the Commission's voluntary sharing of information were viewed as the same as a third-party sharing it, the Commission must balance its obligation to disclose information as necessary to carry out the Commission's jurisdictional responsibilities against an entity's preference not to have information disclosed.<sup>12</sup>

<sup>1</sup> Fixing America's Surface Transportation Act, Public Law 114-94, section 61,003, 129 Stat. 1312, 1773-1779 (2015) (codified at 16 U.S.C. 8240-1).

<sup>2</sup> *Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information, Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Order No. 833, 157 FERC ¶ 61,123 (2016), see 81 FR 93732 (Dec. 21, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> See generally FAST Act, Public Law 114-94, section 61,003, 129 Stat. 1312, 1776.

<sup>5</sup> *Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information*, 155 FERC ¶ 61,278 (2016) (NOPR), see 81 FR 43557 (July 5, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> See generally Order No. 833, 157 FERC ¶ 61,123.

<sup>8</sup> EEI Request at 6-7.

<sup>9</sup> FAST Act, Public Law 114-94, section 61,003, 129 Stat. 1312, 1776.

<sup>10</sup> The CEII request procedures found in § 388.113(g) were first established under the Commission's Critical Energy Infrastructure Information regulations in 2003. See *Critical Energy Infrastructure Information*, Order No. 630, FERC Stats. & Regs. ¶ 31,140, *order on reh'g*, Order No. 630-A, FERC Stats. & Regs. ¶ 31,147 (2003).

<sup>11</sup> Order No. 833, 157 FERC ¶ 61,123 at P 125.

<sup>12</sup> *Id.* P 126.

## Request

9. EEI states that the Commission should reconsider its determination that CEII can be shared over the objections of submitters.<sup>13</sup> EEI asserts that section 215A(d)(2)(D) of the FPA directs the Commission only to facilitate voluntary sharing “by and between” entities. EEI contends that the Commission’s ability to share information over a submitter’s objection, as provided in 18 CFR 388.113(g)(5)(iii), amounts to involuntary sharing not intended by the FAST Act and in violation of FPA section 215A(d)(6).<sup>14</sup> EEI asserts that, by using section 215A(d)(2)(D) to authorize the Commission to provide CEII over the submitter’s objection, the Commission is using the FAST Act to “share” CEII in an involuntary manner. EEI states that its interpretation is consistent with Congress’ decision to make CEII exempt from mandatory disclosure under the Freedom of Information Act (FOIA).<sup>15</sup>

## Commission Determination

10. We deny clarification and hearing of this issue. We disagree with EEI’s contention that the FAST Act only directs the voluntary sharing of CEII “by and between” entities or that the Commission’s release of information over a submitter’s objections constitutes “involuntary” sharing of such information. EEI misconstrues FPA section 215A(d)(2)(D) to argue that the statute’s directives regarding voluntary sharing do not include voluntary sharing of CEII *by the Commission*. Such a reading is inconsistent with the FAST Act in two respects.

11. First, FPA section 215A(d)(2)(D)(i) provides that the Commission’s regulations should “facilitate voluntary sharing of critical electric infrastructure information with, between, and by—(i) Federal, State, political subdivision, and tribal authorities . . .” It would be incongruous to read the FAST Act’s reference to “voluntary sharing . . . by . . . Federal . . . authorities” not to include voluntary sharing by the Commission of CEII in its possession. Second, the FAST Act did not direct the Commission to curtail or eliminate the established, pre-existing process for providing members of the public with access to CEII, which is provided in 18 CFR 388.113(g)(5)(iii).

12. Even before the FAST Act, the Commission’s regulations included a process whereby the Commission’s CEII Coordinator had the discretion to share,

in certain circumstances, CEII that was submitted to, or generated by, the Commission.<sup>16</sup> Under both the prior regulations and the revised regulations at 18 CFR 388.113(d)(1)(vi), a submitter is, as EEI acknowledges, provided an opportunity to comment on the potential disclosure of its CEII.<sup>17</sup> Prior to any determination to release CEII to a requester, pursuant to 18 CFR 388.113(g)(5)(iii), the CEII Coordinator will take into consideration any objections and “will balance the requester’s need for the information against the sensitivity of the information.” Other than characterizing a determination by the CEII Coordinator to ultimately release CEII over an objection as “involuntary sharing,” EEI does not propose any change to the Commission’s long-standing approach nor does EEI demonstrate that the FAST Act is intended to restrict the Commission from sharing CEII, under an NDA, with third parties that have a valid and legitimate need for the material.<sup>18</sup>

13. In addition, our reading of the FAST Act is consistent with EEI’s statement that “[u]nder the plain meaning of the FAST Act statute, the term ‘voluntary’ means the Commission should implement an information sharing process that allows owners to share information intentionally and freely.”<sup>19</sup> The new voluntary sharing provisions, at 18 CFR 388.113(f) of the Commission’s CEII regulations, only govern the process by which the Commission will voluntarily share CEII that has been submitted to the Commission or generated by staff.<sup>20</sup>

<sup>16</sup> Order No. 833, 157 FERC ¶ 61,123 at P 125.

<sup>17</sup> EEI’s argument pertains to the CEII request process found in 18 CFR 388.113(g)(5) of the Commission’s regulations. To the extent that EEI’s argument indirectly relates to the separate voluntary sharing provisions found in § 388.113(f), its argument does not persuade us to grant rehearing on that section for the same reasons as those provided above. For example, under § 388.113(f), except in exigent circumstances, submitters are provided notice prior to release of CEII and may submit comments. In the event of an exigency like a national security issue, the Commission will provide notice of the disclosure to the submitter of CEII as soon as practicable.

<sup>18</sup> EEI’s interpretation suggests that the determination as to whether it is appropriate for the Commission to share CEII should be entirely in the hands of the submitter. Such an approach is inconsistent with the FAST Act as it could limit the Commission’s ability to share CEII. In any event, pursuant to § 388.113(d)(1)(iv), a submitter is provided notice of release of CEII under 18 CFR 388.113(g)(5)(iii), and a submitter who disagrees with the determination providing notice of the release of its CEII has the ability to seek injunctive relief in district court.

<sup>19</sup> EEI Request at 7.

<sup>20</sup> As to sharing of CEII by CEII recipients, under our NDAs, CEII recipients may only share CEII with other individuals covered by our NDA for the same information.

Before the FAST Act and under the revised regulations, entities remain free to share the CEII that they submitted to the Commission with others.

14. Finally, we disagree with EEI’s assertion that its interpretation of the FAST Act’s “voluntary sharing” provisions is consistent with Congress’ creation of a FOIA exemption for CEII.<sup>21</sup> The Commission’s FOIA program and the voluntary sharing contemplated under the FAST Act serve different purposes, with the former serving to support government transparency<sup>22</sup> and the latter governing how certain sensitive information is identified, secured, and shared to support the security and resilience of critical energy infrastructure. We do not agree that the new FOIA exemption protecting against mandatory public disclosure of CEII in response to a FOIA request suggests that Congress also intended to prohibit *any* sharing of that CEII without the submitter’s consent. Rather, the regulations adopted in Order No. 833 struck an appropriate balance between the FAST Act’s provisions protecting CEII from public disclosure with the provisions providing that CEII may be voluntarily shared with certain third parties. Thus, while the FOIA exemption prevents the disclosure of CEII in response to a FOIA request, we disagree with EEI’s assertion that the exemption was intended to preclude the Commission from exercising its discretion to share CEII pursuant to the established procedures in 18 CFR 388.113(g)(5)(iii).

## B. Criteria for Responding to CEII Requests

## Order No. 833

15. In Order No. 833, the Commission concluded that the FAST Act does not require changes to the Commission’s existing process for accessing CEII.<sup>23</sup> The Commission also decided to maintain its balancing approach when determining whether to provide CEII to individuals who demonstrated a need for access to CEII under an executed NDA.<sup>24</sup> The Commission noted that a request for access to CEII is case specific to the unique facts and circumstances of each request and, therefore, declined to provide additional guidance and criteria about how it will respond to individual

<sup>21</sup> EEI Request at 7–8.

<sup>22</sup> See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”).

<sup>23</sup> Order No. 833, 157 FERC ¶ 61,123 at P 144.

<sup>24</sup> *Id.* P 143.

<sup>13</sup> EEI Request at 7.

<sup>14</sup> *Id.*

<sup>15</sup> See 5 U.S.C. 552 as amended by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (2016).

CEII requests under 18 CFR 388.113(g)(5).<sup>25</sup>

#### Request

16. EEI asserts that the Commission erred by declining to provide or clarify the criteria that the Commission will use to determine whether a member of the public is eligible to obtain CEII from the Commission.<sup>26</sup> EEI claims that such clarification will provide clear guidance to Commission staff about when a member of the public may receive CEII and afford a better understanding to submitters about the “benefits or risks involved in providing CEII to the Commission.”<sup>27</sup> EEI also contends that “criteria stating that the Commission will consider public safety benefits before releasing CEII to the public may provide CEII submitters with greater reasons to voluntarily provide CEII to the Commission.”<sup>28</sup>

#### Commission Determination

17. We grant clarification and deny rehearing of this issue. We continue to believe that the Commission has provided sufficient detail on the circumstances in which the Commission will share CEII.<sup>29</sup> The CEII regulations enable “individuals with a valid or legitimate need to access certain sensitive energy infrastructure information” that would otherwise be exempt under FOIA.<sup>30</sup>

18. Since instituting the CEII process in 2003, the Commission has acquired significant experience in processing CEII requests. In particular, the Commission routinely processes CEII requests from, among others, consultants, academics, landowners, and public interest groups. In implementing the provisions of the FAST Act, the Commission is utilizing its vast experience in addressing the various interests of CEII requestors and submitters as well.

19. Furthermore, we disagree with EEI’s assertion that the Commission failed to provide any criteria that the CEII Coordinator will use to determine whether a member of the public is eligible to access CEII. As explained in Order No. 833, the Commission has

utilized a “balancing approach effectively in response to Critical Energy Infrastructure Information requests for almost fifteen years. The balancing approach has provided to individuals with a demonstrated need access to information subject to a NDA.”<sup>31</sup> Consistent with long-standing practice, § 388.113(g)(5)(iii) states that the “CEII Coordinator will balance the requester’s need for the information against the sensitivity of the information.”

20. Contrary to EEI’s assertion, in the NOPR and in Order No. 833, we provided clarification regarding the criteria for obtaining CEII by outlining information that a CEII requester must include in its statement of need.<sup>32</sup> We also stated that a conclusory statement of need by a CEII requester will not suffice.<sup>33</sup> Moreover, we note that a request for access to CEII is case specific to the unique facts and circumstances of each request.

21. In its filing, EEI provides one suggestion (*i.e.*, “public safety benefits”) concerning how the Commission can enhance the criteria to determine whether a member of the public is eligible to obtain CEII from the Commission.<sup>34</sup> We clarify that public safety benefits are one criterion that the CEII Coordinator should consider, as part of the balancing approach described above, in determining whether to share CEII in a particular instance. Overall, we believe that our approach provides sufficient detail on the circumstances in which the Commission will share CEII, while also providing the CEII Coordinator with enough specificity and flexibility to respond to each individual request for CEII.

#### C. Non-Disclosure Agreement

##### Order No. 833

22. Order No. 833 included revisions to strengthen the CEII handling requirements for both Commission staff and external recipients. As part of those revisions, the Commission established minimum requirements for the NDAs that recipients of CEII must execute before receiving access to CEII. The Commission explained that the minimum requirements for an NDA are not exhaustive and do not preclude other requirements.<sup>35</sup> Further, the Commission stated that additional provisions may be added to the NDA and submitters may request additional

provisions.<sup>36</sup> In response to NOPR comments, the Commission amended § 388.113(h)(2) to add a provision to require CEII recipients to promptly report all unauthorized disclosures of CEII to the Commission.<sup>37</sup>

#### Request

23. EEI states that the Commission should consider “modernizing the Commission’s CEII NDA even further to mitigate against the risk of a CEII recipient involuntarily sharing CEII with a hostile actor.”<sup>38</sup> EEI identifies one example of how the Commission may change the CEII NDA. While acknowledging the “incident response clause” in § 388.113(h)(2), EEI suggests that the clause could be changed to require the reporting of unauthorized disclosures that actually occurred or “those reasonably suspected to have occurred.”<sup>39</sup>

#### Commission Determination

24. We grant clarification and deny rehearing on this issue. Order No. 833 explained that § 388.113(h)(2) only includes “‘minimum’ requirements for a NDA and is not intended to be exhaustive or preclude additional provisions, as needed.”<sup>40</sup> As the Commission stated in Order No. 833, under certain circumstances the Commission may add additional provisions to the NDA and submitters may request that additional provisions be added to the NDA.<sup>41</sup> While we decline to make any changes to the minimum requirements for the NDA, the Commission reiterates that the CEII Coordinator may consider adding additional provisions to the NDA on a case by case basis. However, to the extent EEI seeks a specific change to the NDA or requests that the Commission take further comment on revisions to the NDA at this time, we deny those requests. EEI has not demonstrated that the NDA revisions that we have adopted, or the fact that we will entertain further changes to the NDA as appropriate, are unreasonable or arbitrary.

#### D. Designation of Commission-Generated Information

##### Order No. 833

25. In Order No. 833, the Commission determined that for Commission-generated information, the CEII Coordinator, after consultation with the

<sup>25</sup> The Commission, however, outlined the information that an individual seeking access to CEII under 18 CFR 388.113(g)(5) must include in an accompanying statement of need. *See id.*

<sup>26</sup> EEI Request at 6 (averring that nothing in § 388.113(g)(5)(iii) identifies any criteria that the Commission will use before disclosing CEII to a requester).

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *See, e.g.*, 18 CFR 388.113(f) (2017) (providing the procedures for voluntary sharing), § 388.113(g) (providing procedures for accessing CEII).

<sup>30</sup> Order No. 833, 157 FERC ¶ 61,123 at P 3.

<sup>31</sup> *Id.* P 143.

<sup>32</sup> 18 CFR 388.113(g)(5)(i)(B).

<sup>33</sup> *Id.*

<sup>34</sup> EEI Request at 9.

<sup>35</sup> Order No. 833, 157 FERC ¶ 61,123 at P 92.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* P 93.

<sup>38</sup> EEI Request at 10–11.

<sup>39</sup> *Id.* at 10.

<sup>40</sup> Order No. 833, 157 FERC ¶ 61,123 at P 92.

<sup>41</sup> *Id.* P 92.

appropriate Office Director, will determine whether the information is CEII.<sup>42</sup> The Commission concluded that stakeholder participation in CEII designations of Commission-generated information is unnecessary because the Commission has the expertise and experience to make such determinations.<sup>43</sup> The Commission also noted that in certain instances it would be inappropriate for stakeholders to be privy to Commission-generated information that potentially qualified as CEII.<sup>44</sup> Finally, the Commission stated that an entity is not precluded from raising concerns with the CEII Coordinator when an entity believes that Commission-generated information contains CEII about its facility.<sup>45</sup>

#### Request

26. EEI requests that the Commission clarify the existing procedures or provide the anticipated procedure for stakeholder “notification of, and opportunity to comment on, potential disclosure or sharing of Commission-generated information.”<sup>46</sup> EEI asserts that the Commission erred by failing to provide a process for an entity to comment on the possible disclosure or sharing of Commission-generated CEII.<sup>47</sup> EEI contends that the Commission may incorporate a submitter’s CEII in a Commission-generated CEII document that is released to a CEII requester without providing the submitter any opportunity to comment.

27. EEI also contends that the Commission could create a document that combines information that alone did not constitute CEII and was not submitted to the Commission as such, but that combined with other information could constitute CEII.<sup>48</sup> EEI states that in that instance, the submitter would not have had an opportunity to mark the information as CEII.<sup>49</sup> EEI maintains that, in these situations, it would be inconsistent for the Commission not to provide notice and an opportunity to comment.<sup>50</sup>

#### Commission Determination

28. We grant clarification and deny rehearing on this issue. The FAST Act implicitly recognizes that the Commission has the expertise and experience to determine whether any

information, including Commission-generated information, is properly designated as CEII by vesting the Commission with the authority to designate information as CEII. The FAST Act does not require, and EEI identifies no provision in the FAST Act requiring, the Commission to provide notice and opportunity for public comment about the prospective release or sharing of Commission-generated CEII. Furthermore, the Commission is not persuaded that we should establish a requirement for stakeholder input when the Commission combines information not filed as CEII with other information and potentially creates CEII.

29. To the contrary, inherent differences between Commission-generated CEII and CEII from submitters, as well as practical considerations, warrant different procedures. As EEI acknowledges, there are circumstances in which it would be inappropriate for an outside entity to comment on the content of a non-public, Commission-generated CEII document. Nonetheless, EEI asks the Commission to develop a “consistent process” for stakeholder participation. We disagree and believe that crafting a broad notification requirement for each Commission-generated document that discusses CEII in some respect would be impractical and, as we noted in Order No. 833, often inappropriate.<sup>51</sup>

30. Therefore, EEI’s arguments do not persuade us that a formal, mandatory stakeholder process is needed to comment on the release or sharing of Commission-generated CEII. We, however, clarify that nothing in the FAST Act or the Commission’s CEII regulations prevents the CEII Coordinator from exercising discretion in an individual situation to solicit comments from a submitter of CEII or other information when evaluating whether to release a Commission-generated CEII document. We note that even if the Commission determines to release Commission-generated CEII, such a release would be pursuant to an NDA and the Commission’s protections against further unwarranted or prohibited disclosure.

<sup>51</sup> Order No. 833, 157 FERC ¶ 61,123 at P 61. For example, Commission-generated documents may include other forms of non-public information such as pre-decisional, internal deliberations covered by the Deliberative Process Privilege. 5 U.S.C. 552(b)(5)(2017) (protecting from disclosure “intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.”); see *Russell v. Dep’t of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); see also *Environmental Protection Agency v. Mink*, 410 U.S. 73, 87 (1973) (recognizing that “[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny”).

#### E. DOE’s Criteria and Procedures for What Constitutes CEII

##### Order No. 833

31. In Order No. 833, the Commission declined to revise the CEII regulations to identify specific designation criteria and CEII procedures for DOE.<sup>52</sup> The Commission stated that the FAST Act does not compel DOE to make changes to its regulations and noted that nothing within the Commission’s regulations limits DOE’s ability to designate CEII in accordance with the FAST Act.<sup>53</sup>

##### Request

32. EEI asserts that the Commission erred in declining to provide or clarify the applicability of any procedure or process for stakeholders regarding DOE designations of its information as CEII.<sup>54</sup> Specifically, EEI requests that the Commission confirm that DOE determinations regarding CEII will be conducted pursuant to the Commission’s CEII regulations.<sup>55</sup> EEI further requests that if that is not the case, the Commission should clarify that position, so EEI can seek further clarification from DOE as to the applicable procedures and criteria DOE intends to use for such determinations.<sup>56</sup>

##### Commission Determination

33. We deny rehearing on this issue. In Order No. 833, the Commission declined to revise our regulations to identify specific designation criteria and CEII procedures that would be required for DOE.<sup>57</sup> EEI’s argument here does not persuade us to change that determination. Specifically, section 215A(d)(3) of the FAST Act provides that information “may be designated” by the Commission and DOE pursuant to the criteria and procedures that the Commission establishes.<sup>58</sup> As explained in Order No. 833, nothing within the FAST Act compels DOE to make changes to its regulations, and nothing in the Commission’s regulations limits DOE’s ability to designate information in accordance with the FAST Act.<sup>59</sup>

##### The Commission Orders

EEI’s request for clarification is hereby granted in part and EEI’s request

<sup>52</sup> Order No. 833, 157 FERC ¶ 61,123 at P 39.

<sup>53</sup> *Id.*

<sup>54</sup> EEI Request at 7.

<sup>55</sup> *Id.* at 16.

<sup>56</sup> *Id.*

<sup>57</sup> Order No. 833, 157 FERC ¶ 61,123 at P 39.

<sup>58</sup> FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

<sup>59</sup> Order No. 833, 157 FERC ¶ 61,123 at P 39 (citing NOPR, 155 FERC ¶ 61,278 at P 16 n.12).

<sup>42</sup> *Id.* P 59.

<sup>43</sup> *Id.* P 60.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* P 61.

<sup>46</sup> EEI Request at 6.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 13.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 13–14.

for rehearing is denied, as discussed in the body of this order.

By the Commission.

Issued: May 17, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–11537 Filed 5–29–18; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

#### Income Taxes

##### *CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.140 to 1.169), revised as of April 1, 2018, on page 88, in § 1.148–1, paragraph (e)(3) is reinstated to read as follows:

##### **§ 1.148–1 Definitions and elections.**

\* \* \* \* \*

(e) \* \* \*

(3) *Certain hedges.* Investment-type property also includes the investment element of a contract that is a hedge (within the meaning of § 1.148–4(h)(2)(i)(A)) and that contains a significant investment element because a payment by the issuer relates to a conditional or unconditional obligation by the hedge provider to make a payment on a later date. See § 1.148–4(h)(2)(ii) relating to hedges with a significant investment element.

\* \* \* \* \*

[FR Doc. 2018–11690 Filed 5–29–18; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R02–OAR–2016–0625, FRL–9978–24—Region 2]

#### **Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM<sub>10</sub>, 2012 PM<sub>2.5</sub>, 1997 Ozone, and the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of

New Jersey's State Implementation Plan (SIP) revision submittal regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead, 2008 ozone, 2010 nitrogen dioxide, 2010 sulfur dioxide, 2011 carbon monoxide, 2006 particulate matter of 10 microns or less (PM<sub>10</sub>), and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). The EPA is also approving three infrastructure requirements of the 1997 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

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

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2016–0625. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

##### **FOR FURTHER INFORMATION CONTACT:**

Anthony (Ted) Gardella, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3892, or by email at [Gardella.Anthony@epa.gov](mailto:Gardella.Anthony@epa.gov).

**SUPPLEMENTARY INFORMATION:** The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

##### **Table of Contents**

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

##### **I. What is the background for this action?**

Under sections 110(a)(1) and (2) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of a revised primary or secondary National Ambient Air Quality Standards (NAAQS or standard). CAA sections 110(a)(1) and (2) require each

state to make a new SIP submission within three years after the EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS.

On March 1, 2018 (83 FR 8818), the EPA published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** for the State of New Jersey. The NPR proposed to approve elements of the State of New Jersey's Infrastructure SIP submission, dated October 17, 2014, and as supplemented on March 15, 2017, as meeting the CAA section 110(a) infrastructure requirements for the following NAAQS: 2008 ozone, 2008 lead, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), 2011 carbon monoxide (CO), 2006 particulate matter of 10 microns or less (PM<sub>10</sub>), and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>). Although not specifically required by 110(a)(1) since neither NAAQS was new or revised,<sup>1</sup> the SIP submission included infrastructure requirements for the 2006 PM<sub>10</sub> and 2011 CO NAAQS. As explained in the NPR, the State has the necessary infrastructure, resources and general authority to implement the 2008 ozone, 2008 lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2011 CO, 2006 PM<sub>10</sub>, and 2012 PM<sub>2.5</sub> NAAQS, except where specifically noted.

The EPA also proposed to approve three CAA section 110(a) infrastructure requirements for the 1997 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS that were conditionally approved by the EPA on June 14, 2013 (78 FR 35764). New Jersey's response to the conditional approval was not submitted to EPA within one year, but was submitted approximately three months late, and supplemented on March 15, 2017, so the conditional approval is treated as a disapproval. The EPA also proposed to approve New Jersey's October 17, 2014 submittal, as supplemented on March 15, 2017, for the 1997 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

Other detailed information relevant to this action on New Jersey's infrastructure SIP submission, the requirements of infrastructure SIPs and the rationale for the EPA's proposed action are explained in the NPR and the associated Technical Support Document (TSD) in the docket and are not restated here.

<sup>1</sup> EPA notes that, when promulgated, the 2006 24 hour PM<sub>10</sub> NAAQS and the 2011 primary CO NAAQS were neither "new" nor "revised" NAAQS—they merely retained, without revision, prior NAAQS for those pollutants. Accordingly, promulgation of these NAAQS did not trigger a new obligation for New Jersey to make infrastructure SIP submissions.