testing and test-marketing of paid advertising, for the following activities:

1. Credit-back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for credit-back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities.

2. The clear and evident purpose of each qualified activity shall be to promote the sale, consumption or use of California walnuts.

3. No credit-back will be given for any activity that targets the farming or grower trade.

4. Credit-back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

5. Credit-back shall be granted for those qualified activities specified below:

   (i) Credit-back shall be granted for paid media directed to end-users, trade or industrial users, and for money spent on paid advertising space or time, including, but not limited to, newspapers, magazines, radio, television, online, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

   (ii) Credit-back shall be granted for market promotion other than paid advertising, for the following activities:

   (A) Marketing research (except pre-testing and test-marketing of paid advertising);

   (B) Trade and consumer product public relations; Provided, that no credit-back shall be given for related fees charged by an advertising or public relations agency;

   (C) Sales Promotion (in-store demonstrations, production of promotional materials, sales and marketing presentation kits, etc., excluding couponing);

   (D) Trade shows (booth rental, services, and promotional materials).

   (iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler’s name or brand, or the words “California Walnuts”, the amount allowed for credit-back shall reflect that portion of the activity represented by walnuts. If the product is owned or distributed by the handler, in order to receive any amount of credit back, the product must list the ownership or distributorship on the package and display the handler’s name and the handler’s brand. The words “California Walnuts” must be included on the primary, face label. Such activities must also meet the requirements of paragraphs (e)(1), (2), (3), (4), and (5) of this section.

   (iv) If the handler is engaged in marketing promotion activities pursuant to a contract with the Foreign Agricultural Service (FAS), USDA, and/or the California Department of Food and Agriculture (CDFA), unless the Board is administering the foreign marketing program, such activities shall not be eligible for credit-back unless the handler certifies that he or she was not and will not be reimbursed by either FAS or CDFA for the amount claimed for credit-back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler’s contract with FAS or CDFA shall not be eligible for credit-back.

   (6) Credit-back Reimbursement claims. A handler must file claims with the Board to obtain credit-back for creditable expenditures, as follows:

   (i) All claims submitted to the Board for any qualified activity must include:

   (A) A description of the activity and when and where it was conducted;

   (B) Copies of all invoices from suppliers or agencies;

   (C) Copies of all canceled checks or other proof of payment issued by the handler in payment of these invoices; and

   (D) An actual sample, picture or other physical evidence of the qualified activity.

   (ii) Handlers may receive reimbursement of their paid assessments up to their pro-rata share of available dollars to be based on their percentage of the prior marketing year crop total. In all instances, handlers must remit the assessment to the Board when billed, and reimbursement will be issued to the extent of proven, qualified activities.

   (iii) Checks from the Board in payment of approved credit-back claims will be mailed to handlers within 30 days of receipt of eligible claims.

   (iv) Final claims for the marketing year pertaining to such qualified activities must be submitted with all required elements within 15 days after the close of the Board’s marketing year.

   (f) Appeals. If a determination is made by the Board staff that a particular marketing promotional activity is not eligible for credit-back because it does not meet the criteria specified in this section, the affected handler may request the Executive Committee review the Board staff’s decision. If the affected handler disagrees with the decision of the Executive Committee, the handler may request that the Board review the Executive Committee’s decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board’s decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his or her discretion.

§ 984.547 [Reserved]


Bruce Summers,
Administrator, Agricultural Marketing Service.

[FR Doc. 2020–02387 Filed 2–10–20; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 590

Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050

FE Docket Nos.

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**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of proposed policy statement and request for comments.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of a proposed policy statement (Proposed Policy Statement or Proposal). DOE is proposing to extend the standard 20-year term for authorizations to export natural gas from the lower-48 states—including domestically produced liquefied natural gas (LNG), compressed natural gas, and compressed gas liquid—to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Under the Proposal, existing non-FTA authorization holders could apply to extend their export term through December 31, 2050, on a voluntary opt-in basis; existing applicants could amend their pending non-FTA application to request an export term through December 31, 2050, on a voluntary opt-in basis; and DOE would issue all future non-FTA export authorizations with a standard export term lasting through December 31, 2050, unless a shorter term is requested by the applicant. In this document, DOE discusses the Proposed Policy Statement and invites comments on the Proposal. DOE is proposing this policy change under section 3(a) of the Natural Gas Act (NGA) and DOE’s implementing regulations.

**DATES:** Comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, March 12, 2020.
I. Background

A. DOE Export Authorizations Under Section 3 of the Natural Gas Act

DOE is responsible for authorizing exports of domestically produced natural gas to foreign countries under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.1 In relevant part, section 3(c) of the NGA applies to applications for exports of natural gas, including LNG,2 to countries with which the United States has entered into a free trade agreement or import any natural gas from a foreign country under section 3(a).3 Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486) and requires that DOE applications “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”4 Accordingly, this Proposed Policy Statement does not apply to existing or future FTA applications and authorizations. As discussed in Section II.A.5, however, DOE anticipates that, if this Proposal is adopted, FTA authorization holders likely will request a comparable extension in the export term of their existing FTA orders.

For applications to export natural gas to non-FTA countries, section 3(a) of the NGA sets forth the following standard of review:

No person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Secretary of Energy or authorizing it to do so. The Secretary shall issue such order upon application, unless after opportunity for hearing, he finds that the proposed exportation or importation will not be consistent with the public interest. The Secretary may by [the Secretary’s] order grant such application in whole or part, with such modification and upon such terms and conditions as the Secretary may find necessary or appropriate.5

DOE, as affirmed by the D.C. Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.6 Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.7

Before reaching a final decision, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq. DOE’s environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application.8 In other cases, DOE

1 The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–002.04G issued on June 4, 2019.


3 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE’s regulations implementing NEPA.

B. Regulatory Background

1. Public Interest Review for Non-FTA Export Authorizations

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define ‘public interest’ or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application to export LNG to non-FTA countries. These factors include economic, security, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

DOE’s prior decisions have also looked to certain principles established in its 1984 Policy Guidelines. The goals of the 1984 Policy Guidelines are to minimize Federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. Specifically, the 1984 Policy Guidelines state that “[t]he market, not government, should determine the price and other contract terms of imported [or exported] gas,” and that DOE’s “primary responsibility in authorizing imports [or exports] should be to evaluate the need for the [natural] gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.” Although the Policy Guidelines are nominally applicable to natural gas import cases, DOE held in DOE/FE Order No. 1473 that the 1984 Policy Guidelines should be applied to natural gas export applications.

In Order No. 1473, DOE stated that it was guided by DOE Delegation Order No. 0204–111. That delegation order directed the regulation of exports of natural gas “based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator [of the Economic Regulatory Administration] finds in the circumstances of a particular case to be appropriate.”

Although DOE Delegation Order No. 0204–111 is no longer in effect,\footnote{DOE Delegation Order No. 0204–111 (Feb. 22, 1984), at 1 (¶ 1(b)); see also 1984 Policy Guidelines, 49 FR 6699 (incorporating DOE Delegation Order No. 0204–111). In February 1989, the Assistant Secretary for Fossil Energy assumed the delegated responsibilities of the Administrator of the Economic Regulatory Administration. See Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas, 62 FR 30435, 30437 n.15 (June 4, 1997) (citing DOE Delegation Order No. 0204–127, 54 FR 11436 (Mar. 20, 1989)).} DOE’s review of export applications has continued to focus on: (i) The domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE’s policy of promoting market competition, and (iv) any other factors bearing on the public interest described herein.

2. DOE’s Economic Studies Through 2017

Between 2011 and 2017, DOE commissioned four studies to examine the effects of U.S. LNG exports on the U.S. economy and energy markets.\footnote{New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 FR 6685 (Feb. 22, 1984) [hereinafter 1984 Policy Guidelines].} The first study, Effect of Increased Natural Gas Exports on Domestic Energy Markets, was performed by the U.S. Energy Information Administration (EIA) and published in January 2012 (EIA Study).\footnote{Id. at 49 FR 6685.} The second study, Macroeconomic Impacts of LNG Exports from the United States, was performed by NERA Economic Consulting (NERA) and published in December 2012 (NERA Study and, together with the EIA Study, the 2012 LNG Export Study).\footnote{Phillips Alaska Natural Gas Corp., et al. DOE/ FE Order No. 1473, FE Docket No. 96–99–LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska (Apr. 2, 1999), at 14 (citing Yukon Pacific Corp., DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FR § 70,259, 71,128 (1989)).} The third study, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets, was performed by EIA and published in October 2014 (2014 LNG Export Study). The fourth study, The Macroeconomic Impact of Increasing U.S. LNG Exports, was performed jointly by the Center for Energy Studies at Rice University’s Baker Institute and Oxford Economics and published in October 2015 (2015 LNG Export Study). As relevant here, the 2015 LNG Export Study included a case examining export volumes up to 28 Bcf/d of natural gas, and the analysis covered through the year 2040.

DOE relied on these studies, and the public comments received on each study, to better inform its public interest review under NGA section 3(a).\footnote{For more information about the 2012, 2014, and 2015 LNG Export Studies, see U.S. Dep’t Energy, Study on Macroeconomic Outcomes of LNG Exports; Response to Comments Received on Study, 83 FR 67251 (Dec. 28, 2018) [hereinafter 2018 Study Response to Comments].} DOE published its draft report for public review and comment, entitled Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States (Draft Addendum),\footnote{Dep’t of Energy, Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 FR 32258 (June 4, 2014).} and in August 2015, issued the final Addendum with
its response to the public comments contained in Appendix B.22

Second, DOE commissioned the National Energy Technology Laboratory (NETL), a DOE applied research laboratory, to conduct an analysis calculating the life cycle greenhouse gas (GHG) emissions for LNG exported from the United States. The purpose of this analysis was to determine: (i) How domestically-produced LNG exported from the United States compares with regional coal (or other LNG sources) for electric power generation in Europe and Asia from a life cycle GHG perspective, and (ii) how those results compare with natural gas sourced from Russia and delivered to the same markets via pipeline. DOE published the report entitled, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (LCA GHG Report).23 DOE also received public comments on the LCA GHG Report and responded to those comments in prior orders.24 DOE has made the Addendum and the LCA GHG Report, as well as the public comments received on each study, part of the record of each non-FTA proceeding since 2014.

4. DOE’s Standard 20-Year Export Term for Non-FTA Authorizations

Both the NGA and DOE’s regulations provide DOE with broad authority to attach conditions to non-FTA export authorizations. NGA section 3(a) states that DOE may grant an application for a non-FTA export authorization “upon such terms and conditions as the [Secretary] may find necessary or appropriate.”25 Similarly, under 10 CFR 590.404, DOE may “issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the final record.”26

However, neither NGA section 3(a) nor DOE’s regulations prescribe a specific time period for a non-FTA authorization. For this reason, DOE has determined that it has discretion under 10 CFR 590.404 to impose a suitable term for non-FTA authorizations as appropriate, in light of the evidence in each proceeding. In 2011, DOE issued its first conditional long-term export authorization involving domestically produced LNG from the lower-48 states to Sabine Pass Liquefaction, LLC (Sabine Pass) in DOE/FE Order No. 2961.27 In its application, Sabine Pass had requested an export term of 20 years. After reviewing the record evidence, DOE determined that a term of 20 years was consistent with the public interest, and DOE granted the conditional order for the requested 20-year term.28

In 2013, DOE continued to issue long-term non-FTA authorizations for a standard 20-year term. DOE chose a 20-year term for two reasons. First, the economic analysis then-supporting DOE’s authorizations—the 2012 LNG Export Study—did not extend past 20 years at the time the authorizations were issued. In DOE/FE Order No. 3282, for example, Freeport LNG Expansion, L.P., et al. (Freeport) had requested a 25-year export term for its non-FTA authorization. DOE declined to authorize a 25-year export term, and instead approved a 20-year term. DOE reasoned that, “because the NERCA study contains projections over a 20-year period beginning from the date of first export, . . . caution recommends limiting this conditional authorization to no longer than a 20-year term beginning from the date of first export.”29 Second, in the same Freeport order, DOE recognized that “LNG export facilities are capital intensive and that, to obtain financing for such projects, there must be a reasonable expectation that the authorization will continue for a term sufficient to support repayment.”30 DOE found that a 20-year term “is likely sufficient to achieve this result.”31 For these reasons, DOE granted Freeport’s conditional non-FTA order—and, later, its final non-FTA order—for a 20-year term, instead of the requested 25-year term.32 DOE has continued to apply a policy of authorizing a 20-year export term for every long-term non-FTA order issued to date.33 For each final non-FTA order, the 20-year export term commences when the authorization holder begins commercial export of LNG from its facility.34

C. Judicial Decisions Upholding DOE’s Non-FTA Authorizations

Beginning in 2015, Sierra Club petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the Court) for review of five long-term LNG export authorizations issued by DOE under the standard of review described above. Sierra Club challenged DOE’s approval of LNG exports to non-FTA countries from projects proposed or operated by the following authorization holders: Freeport; Dominion Energy Cove Point LNG, LP (formerly Dominion Cove Point LNG, LP); Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, et al. The D.C. Circuit subsequently denied four of the five petitions for review: one in a published decision issued on August 15, 2017 (*Sierra Club*),35 and

24 *See* e.g., Magnolia LNG, LLC, DOE/FE Order No. 399, FE Docket No. 13–132–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Proposed Magnolia LNG Terminal to be Constructed in Lake Charles, Louisiana, to Non-Free Trade Agreement Nations, at 95–121 (Nov. 30, 2016) (description of LCA GHG Report and response to comments).
26 10 CFR 590.404.
27 *See* Sabine Pass Liquefaction, LLC, DOE/FE Order No. 2961, at 2, 9, 37, 42 (May 20, 2011) (Ordering Para. B).
30 Id. at 114–15.
31 Id. at 115.
34 DOE also allows: (i) A term for commercial export operations to commence—typically seven years—set from the date the order is issued; and (ii) a three-year “make-up period” following the end of the 20-year export term, during which the authorization holder may continue to export any “make-up volume” that it was unable to export during the 20-year export term. These provisions are not directly at issue in this Proposal.
three in a consolidated, unpublished opinion issued on November 1, 2017 \(\text{(Sierra Club II)}\).\(^{36}\) Sierra Club subsequently withdrew its fifth and remaining petition for review.\(^{37}\)

In \textit{Sierra Club I}, the D.C. Circuit concluded that DOE had complied with both NGA section 3(a) and NEPA in issuing the challenged non-FTA authorization. Freeport had applied to DOE for authorization to export LNG to non-FTA countries from the Freeport Terminal located on Quintana Island, Texas. DOE granted the application in 2014 in a volume equivalent to 0.4 Bcf/d of natural gas, finding that Freeport’s proposed exports were in the public interest under NGA section 3(a). DOE also considered and disclosed the potential environmental impacts of its decision under NEPA. Sierra Club petitioned for review of the Freeport authorization, arguing that DOE fell short of its obligations under both the NGA and NEPA. The D.C. Circuit rejected Sierra Club’s arguments in a unanimous decision, holding that “Sierra Club has given us no reason to question the Department’s judgment that the [Freeport] application is not inconsistent with the public interest.”\(^{38}\)

In the consolidated opinion in \textit{Sierra Club II} issued on November 1, 2017, the D.C. Circuit ruled that “[t]he court’s decision in \textit{Sierra Club I} largely governs the resolution of the [three] instant cases.”\(^{39}\) Upon its review of the remaining “narrow issues” in those cases, the Court again rejected Sierra Club’s arguments under the NGA and NEPA, and upheld DOE’s actions in issuing the non-FTA authorizations in those proceedings.\(^{40}\)

The D.C. Circuit’s decisions in \textit{Sierra Club I and II} continue to guide DOE’s review of applications to export LNG to non-FTA countries.

\section*{D. Recent Regulatory Developments}

\subsection*{1. 2018 LNG Export Study}

In 2017, DOE commissioned NERA to conduct a new economic study, now referred to as the 2018 LNG Export Study.\(^{41}\) As with its prior economic studies, DOE commissioned the 2018 LNG Export Study to inform its determination of the public interest in pending and future non-FTA application proceedings. DOE published the 2018 LNG Export Study on its website on June 7, 2018,\(^{42}\) and concurrently provided notice of the availability of the Study.\(^{43}\)

Like DOE’s prior economic studies, the 2018 Study analyzed the outcomes of different LNG export levels on the U.S. natural gas markets and the U.S. economy as a whole. Additionally, for the first time in a DOE-commissioned macroeconomic study, the 2018 LNG Export Study assessed the likelihood of different levels of “unconstrained” LNG exports, defined as market-determined levels of exports. The Study examined the period from the year 2020 through 2050, and was based, in part, on the projections in EIA’s \textit{Annual Energy Outlook} 2017\(^{44}\) through 2050.\(^{45}\)

DOE received 19 comments on the 2018 LNG Export Study. DOE summarized and responded to these comments in the Response to Comments document, published on December 28, 2018,\(^{46}\) Based upon the record, DOE determined that the 2018 Study provides substantial support for non-FTA applications within the export volumes considered by the 2018 Study—ranging from 0.1 to 52.8 Bcf/d of natural gas.\(^{47}\) The principal conclusion of the 2018 LNG Export Study is that the United States will experience net economic benefits from the export of domestically produced LNG through the 30-year study period, i.e., from 2020 through 2050.\(^{48}\)

Overall, DOE found that the 2018 LNG Export Study supports the proposition that exports of LNG from the lower-48 states, in volumes up to and including 52.8 Bcf/d of natural gas, will not be inconsistent with the public interest. DOE also stated that it would consider each application to export LNG as required under the NGA and NEPA based on the administrative record compiled in each individual proceeding.\(^{49}\)

\subsection*{2. 2019 Life Cycle Greenhouse Gas Update}

In 2018, DOE commissioned NETL to conduct an update to the 2014 LCA GHG Report, entitled \textit{Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update} (LCA GHG Update).\(^{50}\) As with the 2014 Report, the LCA GHG Update compared life cycle GHG emissions of exports of domestically produced LNG to Europe and Asia, compared with alternative fuel sources (such as regional coal and other imported natural gas) for electric power generation in the destination countries. Although core aspects of the analysis—such as the scenarios investigated—were the same as the 2014 Report, the 2019 LCA GHG Update contained the following three changes:

- Incorporated NETL’s most recent characterization of upstream natural gas production, set forth in NETL’s April 2019 report entitled, \textit{Life Cycle Analysis of Natural Gas Extraction and Power Generation} (April 2019 LCA of Natural Gas Extraction and Power Generation);\(^{51}\)
- Updated the unit processes for liquefaction, ocean transport, and regasification characterization using engineering-based models and publicly-available data information and reviewed by existing LNG export facilities, where possible; and
- Updated the 100-year global warming potential (GWP) for methane (CH\(_4\)) to reflect the current Intergovernmental Panel on Climate Change’s Fifth Assessment Report.\(^{52}\)

\end{footnotesize}
In all other respects, the LCA GHG Update was unchanged from the 2014 Report.

On September 19, 2019, DOE published notice of availability (NOA) of the LCA GHG Update and a request for comments. DOE received seven comments in response to the NOA. In a Response to Comments document that was effective on December 19, 2019, and published in the Federal Register on January 2, 2020, DOE responded to the public comments and summarized its conclusions drawn from the LCA GHG Update.

As DOE explained, the analysis in the LCA GHG Update was based on the most current available science, methodology, and data from the U.S. natural gas system to assess the GHGs associated with exports of U.S. LNG. The Update demonstrated that the conclusions of the 2014 LCA GHG Report have not changed. Specifically, the Update concluded that the use of U.S. LNG exports for power production in European and Asian markets will not increase GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.

The LCA GHG Update estimated the life cycle GHG emissions of U.S. LNG exports to Europe and Asia, compared with certain other fuels used to produce electric power in those importing countries. While acknowledging uncertainty, the LCA GHG Update showed that, to the extent U.S. LNG exports are preferred over coal in LNG-importing nations, U.S. LNG exports are likely to reduce global GHG emissions on a per unit of energy consumed basis for power production. Further, to the extent both U.S. LNG exports and preferred over other forms of imported natural gas, they are likely to have only a small impact on global GHG emissions.

The conclusions of the LCA GHG Update, combined with the observation that many LNG-importing nations rely heavily on fossil fuels for electric generation, suggest that exports of U.S. LNG may decrease global GHG emissions, although there is substantial uncertainty on this point, as indicated above. Further, based on the evidence, DOE saw no reason to conclude that U.S. LNG exports will increase global GHG emissions in a material or predictable way.

In sum, DOE found that the LCA GHG Update supports the proposition that exports of LNG from the lower-48 states will not be inconsistent with the public interest. DOE stated it will evaluate each pending and future non-FTA application as required under the NGA and NEPA, based on the administrative record compiled in each individual proceeding.

E. Existing Non-FTA Authorizations and Pending Applications

To date, DOE has issued 38 final long-term authorizations to export domestically produced (or U.S.) LNG or compressed natural gas to non-FTA countries. The cumulative volume of approved non-FTA exports under these authorizations is 38.06 billion cubic feet per day (Bcf/d) of natural gas, or 13.9 trillion cubic feet per year. As noted above, each of these final non-FTA orders authorize an export term of 20 years.

Additionally, 18 long-term non-FTA applications requesting to export domestically produced LNG from the lower-48 states are currently pending before DOE. These applications represent a cumulative volume of 24.5 Bcf/d of natural gas, or 8.94 trillion cubic feet per year.

To date, DOE also has authorized exports to FTA countries in a volume of 56.24 Bcf/d of natural gas. The volumes authorized for export to FTA and non-FTA countries, however, are not additive to one another. Rather, each order grants authority to export the entire volume of a facility to FTA or non-FTA countries, respectively, to provide the authorization holder with maximal flexibility in determining its export destinations. According to EIA estimates, U.S. domestic dry natural gas production for the year 2019 averaged a rate of 92.03 Bcf/d, well in excess of current long-term FTA and non-FTA authorizations (in non-additive volumes

Finally, DOE notes that the amount of U.S. LNG export capacity that is currently operating or under construction totals 15.54 Bcf/d of natural gas across eight large-scale export projects in the lower-48 states.

II. Proposed Policy Statement

A. Proposal To Extend Standard Term of Non-FTA Authorizations

1. Basis for Proposal and Effect on Export Volume

Recently, authorization holders have indicated that a 30-year export term would better match the operational life of their physical assets—the LNG export facility—allowing them more security in financing their facility and maximizing their ability to contract for exports. LNG export terminals are typically designed for a service life of 30 to 50 years.

Although DOE has limited its non-FTA export authorizations to 20-year export terms based on the projections in the 2012, 2014, and 2015 LNG Export Studies, that limitation is no longer required based on the findings of the 2018 LNG Export Study that included analysis on an expanded time period. Because the 2018 LNG Export Study considered unconstrained (or market-determined) levels of LNG exports and included analysis through the year 2050, the 2018 Study supports export terms lasting through December 31, 2050.

A proposed change in export terms through the year 2050 would not alter the maximum daily rate of export currently approved under each existing non-FTA authorization. The maximum daily rate of export, set in billion cubic

See supra § I.D.1.
foot per day (Bcf/d), is already based on each facility's maximum approved liquefaction production capacity as set by the agency approving the siting and construction of the facility—either the Federal Energy Regulatory Commission or the U.S. Maritime Administration (see supra note 9). But, by extending the period over which these exports would occur, a term extension would provide a mechanism for existing authorization holders to increase the total volume of LNG exports over the life of their authorization.

For the non-FTA applications currently pending before DOE (involving exports from the lower-48 states), the total requested export volume for each application also would increase if DOE ultimately were to grant each application for an export term lasting through the year 2050 (as opposed to the standard 20-year term).

In sum, the Proposed Policy Statement, if adopted, would not increase the approved rate of exports from a particular facility, but it would result in an increase in the total approved volume of exports from each participating facility due to the longer export term. DOE notes that the 2018 LNG Export Study and the recent EIA Annual Energy Outlooks assume a steady rate of exports between 2040 and 2050.

2. Comments of Cheniere Energy, Inc. Requesting Term Extension

On July 27, 2018, Cheniere Energy, Inc. (Cheniere) filed comments in the 2018 LNG Export Study proceeding.68 Cheniere is the parent company of three companies that currently export U.S. LNG under long-term authorizations: Sabine Pass Liquefaction, LLC; Cheniere Marketing, LLC; and Corpus Christi Liquefaction, LLC. As part of its comments, Cheniere asked DOE to: (i) begin issuing export authorizations with a term of 30 years based on the analysis provided in the 2018 LNG Export Study, and (ii) provide a procedure whereby authorization holders with existing 20-year authorizations (such as Cheniere’s subsidiaries) could request such a term extension.69

In support of this request, Cheniere first noted that the 2018 LNG Export Study extends for 30 years and shows macroeconomic benefits to the United States over the entire period.70

Cheniere asserted that it has received interest from LNG buyers who are seeking contracts that extend beyond 20 years. Cheniere stated that this interest in U.S. LNG may be “inhibited” if the seller lacks export authority over the entire contract term.71 Cheniere further stated that, once LNG projects enter operation, the flexibility to extend contracts beyond the initial 20-year term will be even more important. Cheniere maintained that, for foreign buyers deciding between U.S. LNG and alternative long-term sources, a 30-year term may prove decisive.72

3. Canadian Export Term for LNG

On December 4, 2019, Canada granted its first 40-year LNG export license, which it issued to Chevron Canada Limited (Chevron) for a proposed LNG export facility called the Kitimat LNG project.73 Under the terms of that license, Chevron is authorized to export LNG from Canada in a volume of 996.93 billion cubic feet per year (Bcf/yr) of natural gas for a term of 40 years beginning on the date of first export— with a period of 10 years to commence exports.74 Canada’s regulatory agency, the Canada Energy Regulator,75 approved the requested 40-year export term over an argument by a commenter that Canada’s existing natural gas forecasts supported an export term of only 25 years.76 In rejecting this argument, the Canada Energy Regulator found that “the natural gas resource base in Canada, as well as North America overall, is large and can accommodate reasonably foreseeable demand, including the natural gas exports proposed in this Application, and a plausible potential increase in demand” over a 40-year export term.77 This recent development underscores the importance of U.S. LNG export projects being able to offer the same or similar contract terms as their Canadian counterparts.

73 See supra note 34.
74 See supra at § I.B.4.
monitor developments in the LNG export market, however, including EIA’s projections about natural gas supply and demand. Consistent with its longstanding practice, DOE anticipates that it will commission new economic studies and consider any extensions in the export period beyond the year 2050 at the appropriate time in the future.\(^{81}\)

5. Potential Impact on FTA Authorizations and Applications

This Proposal does not apply to FTA applications and authorizations, since DOE is required to grant FTA applications “without modification or delay” under NGA section 3(c). Because of this statutory standard, applicants for FTA orders are not subject to DOE’s standard 20-year term for non-FTA authorizations, and numerous FTA orders already have export terms of 25 or more years. Nonetheless, authorization holders typically apply for both FTA and non-FTA authorizations, and they prefer to align their FTA and non-FTA exports over the same time period for administrative efficiencies. Therefore, if this Proposal is adopted, DOE anticipates that authorization holders may elect to request a comparable extension in the export term of their existing FTA authorization(s) or any pending FTA applications.

B. Proposed Implementation Process

DOE proposes to implement the Proposed Policy Statement as follows:

(1) For existing non-FTA authorizations: Existing authorization holders would request the change on a voluntary opt-in basis. Specifically, each non-FTA authorization holder would file an application requesting an amendment to its authorization to extend its export term through December 31, 2050, with an attendant increase in the total export volume over the life of the authorization;

(2) For pending non-FTA applications: Existing applicants would request the change as an amendment to their pending application, on a voluntary opt-in basis.\(^{82}\) Each applicant would file an amendment to its application to extend its requested export term through December 31, 2050, with an attendant increase in the total export volume over the life of the authorization; and

(3) For future applications: The extended term would become DOE’s standard export term for all future non-FTA authorizations. Accordingly, for any application filed after the date the Proposed Policy Statement is finalized (if it is adopted), the applicant would request an export term lasting through December 31, 2050, unless the applicant prefers a shorter export term.

In each individual docket proceeding, the authorization holder or applicant would be required to submit an application (for #1 and #3) or an amendment to its pending application (for #2) with relevant facts and argument supporting the term request.\(^{83}\) DOE would provide notice of the application or amendment in the Federal Register.\(^{84}\) Additionally, if this Proposed Policy Statement is adopted, DOE anticipates that it would provide suggested application templates on its website (including a blank form for consolidated non-FTA and FTA application proceedings, see supra at Section II.A.5) to ensure more consistent, streamlined proceedings.

Following the notice and comment period in each proceeding, DOE would conduct a public interest analysis of the application (or amended application) under NGA section 3(a). DOE would also have to comply with NEPA, as discussed herein. For existing non-FTA orders, the public interest analysis would be limited to the application for an extended export term—meaning an intervenor or protestor could challenge the requested extension but not the existing non-FTA order. Consistent with its established practice, DOE would respond to any comments received in its final order on each application (or amendment) requesting the extended export term.

DOE notes that, in Cheniere’s comments on the 2018 LNG Export Study requesting that DOE implement a 30-year export term, Cheniere urged DOE to consider a “consolidated proceeding” for all existing authorizations. Under this approach, Cheniere stated that DOE should “consider the [export term] extension of all existing authorizations in a single proceeding . . . because the public interest question in each case is identical.”\(^ {85}\) Cheniere also asserted that DOE’s decision to extend all existing export terms in a consolidated proceeding would be eligible for a categorical exclusion from NEPA\(^ {86}\)—specifically, categorical exclusion B5.7 (10 CFR part 1021, subpart D, appendix B5).\(^ {87}\)

As indicated, DOE is currently proposing a voluntary application process for existing authorization holders that would be adjudicated in each individual proceeding (#1). DOE believes that not every authorization holder may want to have an extended export term, and that the public interest considerations in individual proceedings may vary. Additionally, DOE takes no position on Cheniere’s suggestion that any decision by DOE to extend an existing export term would be eligible for a categorical exclusion from NEPA (such as categorical exclusion B5.7). If this Proposed Policy Statement is adopted, DOE would comply with its NEPA obligations in each individual application proceeding, consistent with its current practice.\(^ {88}\)

III. Invitation To Comment

In response to this document, any person may file comments addressing the Proposed Policy Statement. The comments will help to inform DOE’s decision as to whether to adopt the Proposed Policy Statement for use in current and future non-FTA proceedings. DOE invites comment on any aspect of the Proposed Policy Statement, including but not limited to the potential benefits and impacts associated with the Proposal and the voluntary opt-in process for existing authorization holders and applicants. Interested parties will be provided 30 days from the date of publication of this Notice of proposed policy statement in which to submit their comments.

IV. Public Comment Procedures

DOE is not establishing a new proceeding or docket in this document. Comments submitted in compliance with the instructions in this document will be placed in the administrative record for all of the above-referenced proceedings and need only be submitted once. Additionally, the submission of comments in response to this Notice of proposed policy statement will not make commenters parties to any of the affected dockets. Persons with an

\(^{81}\) DOE previously affirmed its commitment to export authorizations issued under the NGA, including existing and future long-term non-FTA authorizations at issue under this Proposal. See U.S. Dep’t of Energy, Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 83 FR 28841, 28843 (June 21, 2018) (stating that authorization holders and interested stakeholders “should have the utmost confidence in the validity of DOE/FE’s LNG export authorizations for the full term of each non-FTA order”). See 10 CFR 590.204.

\(^{82}\) See 10 CFR 590.201, 590.202, 590.204.

\(^{83}\) See 10 CFR 590.205.

\(^{84}\) See 10 CFR 590.204.

\(^{85}\) Cheniere Comments at 6.

\(^{86}\) See 10 CFR 590.201, 590.202, 590.204.

\(^{87}\) See 10 CFR 590.205.

\(^{88}\) See supra at 1.A.
interest in the outcome of one or more of the affected dockets already have been given an opportunity to intervene in or protest those matters by complying with the procedures established in the notice of application issued in each respective docket and published in the Federal Register. Future opportunities for intervention or protest will be published in the Federal Register only for the applications to extend the term.

Comments may be submitted using one of the following methods:

(1) Submitting the comments using the online form at https://fossil.energy.gov/app/docketindex/docket/index/22.

(2) Mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in ADDRESSES; or

(3) Hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in ADDRESSES.

For administrative efficiency, DOE prefers comments to be filed electronically using the online form (method 1). All comments must include a reference to “Term Extension—Proposed Policy Statement” in the title line. The record in the above-referenced proceedings will include all comments received in response to this Notice of proposed policy statement. DOE will review the comments received on a consolidated basis.

The Proposed Policy Statement is available for inspection and copying in the Division of Natural Gas Regulation docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Additionally, the Proposed Policy Statement and any comments filed in response to this document will be available on the following DOE website: https://fossil.energy.gov/app/docketindex/docket/index/22.

V. Administrative Benefits

In this Proposed Policy Statement, DOE is not proposing any new requirements for applicants or authorization holders under 10 CFR part 590. Rather, DOE’s intent is to minimize administrative burdens and to enhance certainty for authorization holders in the U.S. natural gas export market, as well as for those who may purchase U.S. LNG.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Proposed Policy Statement.


Steven Eric Winberg,
Assistant Secretary, Office of Fossil Energy.

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Shenandoah, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Shenandoah Municipal Airport, Shenandoah, IA. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Shenandoah non-directional radio beacon (NDB), which provided navigation information for the instrument procedures at this airport. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before March 27, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0791; Airspace Docket No. 19–ACE–13, at the beginning of your comments. You may also submit comments through the internet at https://www.regulations.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. FAA Order 7400.11D, 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 7400.11D at NARA, email fedreg.legal@nara.gov or go to https://www.archives.gov/federal-register/cfr/ibr-locations.html.

FOR FURTHER INFORMATION CONTACT:

Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 would amend the Class E airspace extending upward from 700 feet above the surface at Shenandoah Municipal Airport, Shenandoah, IA, to support IFR operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Comments will be acknowledged receipt of their comments on this notice must submit with those