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Reader Aids

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Presidential Documents

Title 3—

The President

Memorandum of April 16, 2015

Delegation of Authority To Transfer Certain Funds in Accordance With Section 610 of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 610 of the Foreign Assistance Act of 1961, as amended (FAA) and section 301 of title 3, United States Code, I hereby delegate to you the authority, subject to fulfilling the requirements of section 652 of the FAA and section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Division K, Public Law 113–76), to make the determination necessary for and to execute the transfer of $12.15 million in the Fiscal Year 2014 Nonproliferation, Antiterrorism, Demining, and Related Programs account to the Economic Support Funds account for programs to counter violent extremism.

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, April 16, 2015

[FR Doc. 2015–10501
Filed 5–1–15; 8:45 am]
Billing code 4710–10

Rules and Regulations

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

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1207

RIN 2590–AA67

Minority and Women Inclusion Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a final rule to amend its regulation on minority and women inclusion by requiring the Federal Home Loan Banks (Banks) and the Office of Finance to include in the contents of their annual reports certain demographic information related to their boards of directors as well as a description of their related outreach activities during the reporting year.

DATES: This rule is effective July 6, 2015.

FOR FURTHER INFORMATION CONTACT: Sharron P.A. Levine, Director, Office of Minority and Women Inclusion, *Sharron.Levine@fhfa.gov,* (202) 649–3496; or Eric Howard, Deputy Director, Office of Minority and Women Inclusion, *Eric.Howard@fhfa.gov,* (202) 649–3009; or Karen Lambert, Associate General Counsel, *Karen.Lambert@fhfa.gov,* (202) 649–3094 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal government. HERA transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and of the Federal Housing Finance Board over the Banks and the Bank System's Office of Finance to FHFA. The Enterprises and the Banks are collectively referred to as the regulated entities.

The Safety and Soundness Act provides that FHFA is headed by a Director with general supervisory and regulatory authority over the regulated entities. FHFA is charged, among other things, with overseeing the prudential operations of the regulated entities. FHFA is also charged with ensuring that the regulated entities: Operate in a safe and sound manner including maintenance of adequate capital and internal controls; foster liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act and the respective authorizing statutes of the regulated entities; carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and engage in activities and operations that are consistent with the public interest.[1]

B. Office of Minority and Women Inclusion

i. Statutory Requirements

Section 1116 of HERA amended section 1319A of the Safety and Soundness Act, 12 U.S.C. 4520, to require, in part, that the regulated entities establish an Office of Minority and Women Inclusion (OMWI) or designate an office responsible for carrying out the responsibilities of OMWI. That office is responsible for: All matters relating to diversity in the entity's management, employment, and business activities; the development and implementation of standards and procedures to promote diversity in all business and activities of the regulated entity; and the submission of an annual report to FHFA detailing the actions taken to promote diversity and inclusion. Furthermore, 12 U.S.C. 1833e, and Executive Order 11478, require FHFA and the regulated entities to promote equal opportunity in employment and contracting.

ii. FHFA's Regulations

FHFA adopted regulations to implement section 1116 of HERA, 12 U.S.C. 1833e and Executive Order 11478, and to set forth the minimum requirements for the regulated entities' diversity programs and reporting requirements. Those regulations, located at 12 CFR part 1207, require each regulated entity and the Office of Finance to establish an OMWI, or designate another office that would be responsible for fulfilling the entity's OMWI responsibilities. Each of these entities must implement policies and procedures to ensure, to the maximum extent possible, in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity and the Office of Finance, including in management, employment, procurement, insurance, and all types of contracts.[2] The policies also must encourage the consideration of diversity in the nomination or solicitation of nominees for positions on boards of directors as well as engagement in recruiting and outreach directed at encouraging minorities, women and individuals with disabilities to seek or apply for employment with the regulated entity or the Office of Finance.[3]

Part 1207 also requires each regulated entity and the Office of Finance to submit to the FHFA Director, on or before March 1 of each year, a detailed annual report summarizing its activities during the reporting year (January 1 through December 31 of the preceding year) to comply with the OMWI regulatory requirements.[4] To that end, each regulated entity and the Office of Finance is required to submit as part of its annual report the EEO–1 Employer Information Report (Form EEO–1 used by the Equal Employment Opportunity

[1] Section 1102 of HERA, 122 Stat. 2663 and 2664.

[2] 12 CFR 1207.21(b).

[3] 12 CFR 1207.21(b)(5).

[4] 12 CFR 1207.22(c) and 1207.23.

Commission (EEOC) and the Office of Federal Contract Compliance Programs to collect certain demographic information) or a similar report.[5] The Form EEO–1 pertains only to broad occupational categories of employees such as executives/senior level officials, first/mid-level officials and managers, professionals, technicians, and other employee job categories, and those employees' gender, race, and ethnicity classifications.[6]

In addition, part 1207 provides that the FHFA Director has broad enforcement authority in that he or she may enforce this regulation and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514.[7] To that end, the FHFA Director may conduct examinations of the activities of a regulated entity or the Office of Finance under and in compliance with this part 1207 pursuant to 12 U.S.C. 4517.[8]

C. The Bank System

The Bank System (System) was created by the Federal Home Loan Bank Act of 1932 (Bank Act) to support mortgage lending and related community investment. It is currently composed of 12 Banks, Bank member financial institutions, and the System's fiscal agent, the Office of Finance. The Banks fulfill their statutory mission primarily through providing secured loans (advances) to their members.

The Office of Finance is a joint office of the Banks, the primary responsibility of which is to act as their agent in offering, issuing, and servicing the consolidated obligations that are issued to fund the operations of the Banks.[9] The Office of Finance also prepares the combined financial reports for the System, functions as its fiscal agent, and performs certain duties relating to the Financing Corporation and Resolution Funding Corporation, respectively.[10]

The board of directors of the Office of Finance consists of 17 members; these include the 12 Bank presidents who serve *ex officio* and five independent directors.[11] The independent directors must be United States citizens and not have any material relationship with a Bank or the Office of Finance. As a group, the independent directors must have substantial experience in financial and accounting matters. The Office of Finance's independent directors were initially appointed by FHFA. Once the terms of the independent directors expire or the positions otherwise become vacant, the succeeding independent directors will be elected by majority vote of the Office of Finance's board of directors subject to FHFA's review of, and non-objection to, each independent director.[12]

Section 1202 of HERA altered the composition of the Banks' boards of directors by amending section 7 of the Bank Act (12 U.S.C. 1427) to require the management of each Bank to be vested in a board of 13 directors, or such other number as the Director determines appropriate. In addition, each board must comprise both a majority of member directors and at least 40 percent of independent directors.[13] Both member and independent directors are elected by a plurality vote of the members. All board members are required to be U.S. citizens.

Each member director nominee is required to execute a director eligibility certification form prescribed by FHFA.[14] A member director is a member of the board of directors of a Bank, who is a director or officer of a member institution located in the district in which the Bank is located.[15]

Each independent director nominee is required to execute an independent director application form prescribed by FHFA that demonstrates the individual is eligible and has the qualifications to be an independent director.[16] An independent director is a member of the board of directors of a Bank who is a bona fide resident of the district in which the Bank is located.[17] Each independent director who is not a public interest director is required to have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management, or such other expertise as the Director may prescribe by regulation.[18] FHFA regulations include the law as one of the areas in which an independent director may have knowledge of, or experience in, to qualify as an independent director.[19] Before nominating any individual to be an independent director, each Bank is required to determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.[20] At least two of the independent directors are required to be public interest directors who shall have more than four years of experience in representing consumer or community interests on banking services, credit needs, housing, or consumer financial protection.[21]

FHFA's regulations include specific actions the Banks may take when nominating and electing directors as well as limitations on the Banks' actions.[22] For example, each Bank may conduct an annual assessment of the skills and experience of the members of its board of directors and may determine whether the capabilities of the board would be enhanced by the addition of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law.[23] If the Bank identifies such particular qualifications, it will inform the members as part of its announcement of elections.[24]

FHFA's regulations also set out the circumstances under which support may be provided for the nomination or election of an individual to a member or independent directorship.

Member Directors: A Bank director, officer, attorney, employee, or agent acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided no such individual shall purport to represent the views of the Bank in doing so.[25]

Independent Directors: A Bank director, officer, attorney, employee, or agent and the board of directors and Advisory Council (and members of the Advisory Council) may support the

[5] 12 CFR 1207.23(b)(1).

[6] The race and ethnicity categories used on the Form EEO–1 are: Hispanic or Latino; White (Not Hispanic or Latino); Black or African American (Not Hispanic or Latino); Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino); Asian (Not Hispanic or Latino); American Indian or Alaska Native (Not Hispanic or Latino); Two or More Races (Not Hispanic or Latino).

[7] 12 CFR 1207.24.

[8] *Id.*

[9] 12 CFR 1273.3(a).

[10] 12 CFR 1273.3(b)–(d).

[11] 12 CFR 1273.7(a).

[12] 12 CFR 1273.7(d); *See* 75 FR 23163 (May 3, 2010).

[13] Previously, section 7 of the Bank Act required each Bank's board of directors to be comprised of 14 directors, 8 of whom were elected by members and 6 of whom were appointed by the former Federal Housing Finance Board.

[14] 12 CFR 1261.7(c).

[15] 12 U.S.C. 1427(a)(4)(B).

[16] 12 CFR 1261.7(d).

[17] 12 U.S.C. 1427(a)(4)(A).

[18] 12 U.S.C. 1427(a)(3)(B)(i).

[19] 12 CFR 1261.7(e)(1).

[20] 12 CFR 1261.7(e)(1).

[21] 12 U.S.C. 1427(a)(3)(B)(ii); 12 CFR 1261.7(e)(2).

[22] 12 CFR 1261.9.

[23] 12 CFR 1261.9(a).

[24] 12 CFR 1261.9(a).

[25] 12 CFR 1261.9(b)(1).

candidacy of any individual nominated by the board of directors for election to an independent directorship.[26]

Beyond these specific allowances for support, a Bank director, officer, attorney, employee, or agent is otherwise prohibited, directly or indirectly, from supporting or opposing the nomination or election of a particular individual for a member or independent director vacancy, or from taking any other action to influence the voting with respect to any particular individual.[27]

D. Proposed Minority and Women Inclusion Amendments

On June 25, 2014, FHFA published a proposed rule to amend its regulation on Minority and Women Inclusion to revise the existing reporting requirements.[28] Proposed § 1207.23(b)(9)(i) would require each Bank and the Office of Finance to include in the contents of its annual report data showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance.[29] Proposed § 1207.23(b)(9)(i)(A) would require the Banks and the Office of Finance to use data collected through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information.[30] Proposed § 1207.23(b)(9)(i)(B) would require that the Banks and the Office of Finance use the same demographic classifications as those on the Form EEO–1.[31] FHFA noted in the **Federal Register** explanation of the proposed rule that the aggregate board diversity data reported to FHFA would establish a baseline to analyze future trends, and could be used to assess the effectiveness of the strategies developed by the Banks and the Office of Finance related to promoting board diversity.[32]

The proposed rule would also add § 1207.23(b)(9)(ii), which would require the Banks and the Office of Finance to include a description of their outreach activities and strategies related to promoting diversity in nominating or soliciting nominees for positions on boards of directors.[33] Finally, proposed § 1207.23(b)(10) would require a year-over-year comparison of the data reported in § 1207.23(b)(9) by the Banks and the Office of Finance.[34]

The proposed amendment to § 1207.22(c) would require the Banks and the Office of Finance to include the board demographic data and a description of related outreach activities and strategies in the contents of the annual report submitted to FHFA beginning with the report required on or before March 1, 2015.[35]

The 60-day comment period closed on August 25, 2014. FHFA received three comment letters in response to the proposed rule. Nine Banks (Atlanta, Boston, Chicago, Cincinnati, Des Moines, New York, Pittsburgh, Topeka, and Seattle) and the Office of Finance submitted consolidated comments in one letter. The Greenlining Institute, a non-profit organization, and a private citizen also submitted comment letters. The comments were thoughtful and discussed matters that were carefully considered by FHFA.

II. Final Rule

FHFA responds to specific concerns below as it explains aspects of the rule to which the comments pertain. After considering the comments received in response to the proposed rule, FHFA is adopting a final rule amending its minority and women inclusion regulations, which applies to the Banks and the Office of Finance.

A. Applicability of Amendments

A private citizen commented that the amendments should apply to the Enterprises as well as to the Banks and the Office of Finance. FHFA does not include the Enterprises in the final rule. As noted in the **Federal Register** explanation of the proposed rule, FHFA, in its role as conservator of Fannie Mae and Freddie Mac, is involved in the selection of their board members.[36] Therefore, FHFA maintains that under current circumstances, it is not necessary to consider promulgating regulations pertaining to the Enterprises with respect to the requirements of the final rule.

B. Data Collection

i. Method of Collection

The nine Banks and the Office of Finance commented that FHFA should include the voluntary self-identification request for board diversity demographic data in the Independent Director Annual Certification Form and the annual Member Director Eligibility Certification Form, which they believe would provide a ''simple method'' of collecting this information.

FHFA does not adopt this proposal in the final rule. These forms are used solely to collect information to determine whether each director meets the statutory and regulatory eligibility requirements.[37] The demographic status of a director or candidate for director is not a requirement for eligibility. In addition, completion of the annual director certification forms is mandatory, whereas submission of minority and gender classification data is voluntary. The final rule adopts the proposed requirement that the Banks and the Office of Finance collect board demographic information by requesting each incumbent director to voluntarily self-identify his or her minority and gender classification, without personally identifiable information. The inclusion of the request for board diversity demographic data in the annual certification forms could imply that the information is mandatory and not voluntary. The inclusion of the request for board diversity demographic data in the annual director certification forms could also raise privacy concerns.

The Greenlining Institute proposed mandating the use of the Form EEO–1 itself to collect the board member demographic information to standardize reporting metrics. FHFA does not adopt this proposal in the final rule. The Form EEO–1 is a compliance survey tool required to be completed by certain employers who are subject to title VII of the Civil Rights Act of 1964, as amended, in accordance with the EEOC's implementing regulations.[38] The Form EEO–1 categorizes a company's employment data by race and ethnicity, gender and job category. Part 1207 requires that the Banks and the Office of Finance report employment demographic information to FHFA using the Form EEO–1 or similar report. The Form EEO–1 does not include a job category for board members since they are not employees. Therefore, the final rule continues to leave to the discretion of the Banks and the Office of Finance the particular method of collection of the data as long as the Form EEO–1 diversity categories are used.

The nine Banks and the Office of Finance also commented that it is not ''necessary or appropriate'' to follow the instructions of the Form EEO–1 with respect to the collection of the board

[26] 12 CFR 1261.9(b)(2).

[27] 12 CFR 1261.9(c).

[28] 79 FR 35960–35963 (June 25, 2014).

[29] *See* 79 FR 35963 (June 25, 2014).

[30] *Id.*

[31] *Id.*

[32] *See* 79 FR 35961–35962 (June 25, 2014).

[33] *See* 79 FR 35963 (June 25, 2014).

[34] *Id.*

[35] *Id.*

[36] *See* 79 FR 35961 (June 25, 2014).

[37] The Independent Director Annual Certification Form applies to each incumbent Bank director, and the Member Director Eligibility Certification Form applies to both candidates for and incumbents of member directorships.

[38] *See* 29 CFR 1602.7.

demographic information, which allow employers to report observed diversity.[39] The commenters requested that FHFA clarify that there is no requirement to report observed diversity in addition to the board members' voluntary demographic self-identification. FHFA agrees with this comment and reiterates that the Banks and the Office of Finance are expected to report aggregate data based only on the board members' voluntary demographic self-identification.

ii. Diversity Categories

The proposed rule requires the Banks and the Office of Finance to use the ''same classifications as those on Form EEO–1,'' referred to here as ''diversity categories,'' for the purpose of reporting minority and gender classifications of individuals on the boards of directors of the Banks and the Office of Finance. The nine Banks and the Office of Finance commented that following the diversity categories of the Form EEO–1 for boards of directors is ''neither necessary nor appropriate'' and requested that the minority categories as defined in part 1207 be used. The commenters propose that the Form EEO–1 diversity categories be replaced with the diversity categories found in § 1207.1, which defines ''minority'' as ''any Black (or African) American, Native American (or American Indian), Hispanic (or Latino) American, or Asian American.'' The commenters note that although it is reasonable for FHFA to require the Banks and the Office of Finance to report employee demographic information using the Form EEO–1 diversity categories to avoid duplicating reporting burdens and to ensure that the data reported is consistent with similar information reported to any other agency or regulator, they do not believe these categories are necessary or appropriate for board member demographic information. The commenters provide that there is no legal requirement to report board member demographics, and further note that the ''[t]he small size of the reporting pool and greater visibility of each respondent necessitates heightened sensitivity.''

FHFA does not adopt the request to require the use of the minority categories as defined in part 1207. The definition of ''minority'' in part 1207 is consistent with that in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which is referenced by section 1319A of the Safety and Soundness Act, as amended by HERA.[40] The Form EEO–1 includes six diversity categories (*i.e.,* Hispanic or Latino; Black or African American (not Hispanic or Latino); Native Hawaiian or Other Pacific Islander (not Hispanic or Latino); Asian (not Hispanic or Latino); American Indian or Alaska Native (not Hispanic or Latino); or Two or More Races (not Hispanic or Latino)). Part 1207 requires that the regulated entities use the Form EEO–1 to report their demographic workforce data. Use of the same minority categories to collect board diversity data will provide consistency of reporting and enhance the comparability of the Banks' and the Office of Finance's board composition to that of their workforces. In addition, use of the Form EEO–1's broader diversity categories will provide a board member with more choices should he or she choose to self-identify.

iii. Collection of Additional Data

The nine Banks and the Office of Finance proposed that FHFA include a category for individuals with disabilities in the board demographic self-reporting request. FHFA does not adopt this proposal in the final rule. The requirement for the regulated entities to report data related to persons with disabilities is limited in part 1207 due to medical privacy concerns.[41] In addition, disability status is not included as a category on the Form EEO–1, and therefore, is not reported as part of the workforce demographic data. For privacy reasons and for comparability of reporting, FHFA does not include a category for individuals with disabilities in the final rule requirements related to board diversity reporting.

The commenters noted that some Banks have Equal Employment Opportunity statements that include diversity categories beyond the required protected classes. The commenters also highlighted their efforts to recruit, hire, and retain employees within the additional diversity categories. To that end, FHFA affirms that the Banks and the Office of Finance have the flexibility to collect demographic status information beyond the gender and minority categories on the Form EEO–1, but FHFA does not require the Banks and the Office of Finance to collect or report information beyond the requirements of the final rule.

The Greenlining Institute proposed that FHFA collect additional information about the board members, including their professional backgrounds, ages, and board turnover data (including time served on the board). The commenter believes that the additional information will better inform FHFA about the composition of the Banks' and the Office of Finance's respective boards. FHFA does not adopt this proposal in the final rule. Board members are required to meet specific statutory and regulatory eligibility requirements, and information related to these requirements is collected on the pertinent director certification forms. The Banks already report information about their board members' professional backgrounds, time served on the board, and ages in their annual Form 10–K reports filed with the U.S. Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities and Exchange Act of 1934, which are publicly available. The Office of Finance provides similar information about its directors in the annual Federal Home Loan Bank Combined Financial Report, which also is publicly available. As a result, it is not necessary to include in the final rule a reporting requirement for these types of data.

The Greenlining Institute also proposed that FHFA collect additional data by use of qualitative inquiries on recruitment activities and other information related to board members and applicants. FHFA does not adopt this proposal in the final rule. The final rule requires the Banks and the Office of Finance to include a description of their outreach activities and strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on their respective boards of directors. Such descriptions could include recruiting events. The additional data collection could lead to the attribution of personally identifiable information due to the small number of board member positions.

C. Outreach Activities

i. Broad View of Diversity

The nine Banks and the Office of Finance requested that FHFA take a broad view of diversity for the purpose of proposed § 1207.23(b)(9)(ii), which would require reporting ''the outreach activities and strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on boards of directors of the Banks and the Office of Finance.'' The commenters proposed that the minority and women inclusion amendments allow a regulated entity to define diversity for the purpose of describing their outreach activities and strategies. The commenters noted FHFA's **Federal**

[39] *See* EEO–1 Instruction Booklet, Appendix, paragraph 4.

[40] 12 U.S.C. 4520(b).

[41] *See* 75 FR 81396 (December 28, 2010).

Register explanation of the final rule on the Bank boards of directors eligibility and elections, which states that ''diversity among the members of each board of directors of the Banks would be beneficial to the Banks, and thus [FHFA] encourages the Banks to consider the diversity of their boards . . . as it requests nominees for member directorships from its members and as it goes through the process of nominating candidates for independent directorships.'' [42] However, the eligibility and elections final rule pertaining to the Banks' boards of directors does not include any provisions that address diversity.

FHFA does not include a definition of ''diversity'' in this final rule and maintains that the Banks and the Office of Finance have the flexibility to conduct their outreach activities and strategies to promote board diversity beyond that contemplated by the rule. However, FHFA expects the Banks and the Office of Finance to report on their outreach activities and strategies that promote minority and women inclusion for the purpose of satisfying the reporting requirements of § 1207.23(b)(9)(ii). FHFA intends to develop guidance that will further elaborate on the agency's expectations related to outreach activities and strategies for the Banks' and the Office of Finance's boards of directors.

ii. Interplay With Director Nomination and Election Process

Also related to the outreach reporting requirement, the nine Banks and the Office of Finance commented that the rule should acknowledge aspects of the director nomination and election process, including the geographic limitations, eligibility requirements and nomination procedures, and that a Bank director, officer, attorney, employee, or agent is restricted by 12 CFR 1261.9 from taking certain actions to influence director nominations and elections.

The nine Banks and the Office of Finance noted that the election regulations at § 1261.9(c) prohibit a Bank director, officer, attorney, employee or agent from communicating in any manner that he or she directly or indirectly supports or opposes the nomination or election of a particular individual for a directorship or from taking any other action to influence the voting with respect to any particular individual. The commenters also noted that the election regulations provide exceptions to the prohibitions when the actions taken meet the following criteria:

- The actions are part of a skills and experience assessment and statement, as permitted by § 1261.9(a);
- The actions taken are in his or her personal capacity, to support the nomination or election of any individual for a member directorship, provided that he or she does not purport to represent the views of the Bank or its board of directors in doing so, as permitted by § 1261.9(b)(1); or

The actions support the candidacy of any individual nominated by the board of directors for election to an independent directorship, as permitted by § 1261.9(b)(2).

The commenters expressed concern that the regulatory restrictions on communication could limit a Bank's ability to address gender or minority identification in the election process, particularly with respect to member directorships. The commenters provided several examples of general outreach and education efforts to promote diversity on their respective boards of directors that they believe are consistent with the terms of § 1261.9. The examples included the following actions for promoting board diversity:

- Engaging in general outreach to encourage a diverse pool of nominations for member directorships and applications for independent directorships;
- including a statement about EEO in member director nomination, independent director application, and election materials;
- encouraging trade associations to consider diverse candidates for member director nominations, or encouraging a Bank's Advisory Council to encourage applications from diverse candidates for an independent directorship; and
- providing information about Bank directorships and the election process through general outreach to professional affinity groups to which officers and directors of member institutions may belong.

FHFA agrees that the scenarios provided by the Banks are permissible under, and consistent with, the existing election regulations at 12 CFR 1261.9.

In addition, the commenters requested clarification on whether more direct actions would be permissible, such as a Bank identifying specific individuals as potential nominees and encouraging the nomination of an individual for a member directorship.

Member Directors: With respect to identifying and supporting specific individuals for nomination or election, the regulations permit a Bank director, officer, attorney, employee or agent, acting in his or her personal capacity, to support the nomination or election of any individual for a member directorship. The term '' 'personal capacity' is intended to preclude the use of a director's official title, position, or authority associated with the position of Bank director, such as through use of Bank stationery, to endorse a candidate.'' [43] While the regulations allow such support, they provide that no Bank director, officer, attorney, employee or agent may purport to represent the views of the Bank or its board of directors.[44] Thus, support for the nomination or election of individual member directors, including considerations of diversity, may be made by Bank directors, officers, attorneys, employees or agents acting only in a personal capacity.

Independent Directors: Although not addressed by the commenters, FHFA notes that nothing in the existing nomination and election regulations prohibits board members and others from discussing the importance of diversity when nominating, or considering the nomination of, individuals for independent directorships. For example, Board members may introduce the topic and discuss the role diversity plays in the solicitation and nomination processes for independent directorships.

FHFA has also addressed the commenters' concerns in the final rule. FHFA acknowledges this ''interplay'' between the outreach requirements in the minority and women inclusion regulations and the Bank board of directors nomination and election regulations and further clarifies it by adding a reference to § 1261.9 in § 1207.23(b)(9)(ii) in the final rule to require that the Banks conduct their outreach activities and strategies consistent with the restrictions in the director nomination and election regulations. Since these restrictions apply only to the Banks, FHFA included the phrase ''consistent with 12 CFR 1261.9'' as a parenthetical after ''Banks'' in § 1207.23(b)(9)(ii), and not at the end of that section as proposed by the commenters.

D. Reports

i. Due Date for Initial Data Submission

FHFA did not receive any comments regarding the proposed rule's requirement to submit the demographic board data concurrent with the March 1, 2015, minority and women inclusion report. Since publication of the final

[42] 74 FR 51453 (October 7, 2009).

[43] When proposing the predecessor regulation, the Federal Housing Finance Board explained the term ''personal capacity'' as quoted above. *See* 63 FR 26536 (May 13, 1998).

[44] 12 CFR 1261.9(b)(1).

rule follows that date, FHFA has extended the timeframe for initially submitting the board diversity data and outreach activities and strategies executed in order to afford the Banks and the Office of Finance a reasonable opportunity from the effective date of the final rule to collect and submit this data. Therefore, the final rule amends § 1207.22(c) to require the first submission of board demographic data and outreach activities and strategies to FHFA no later than September 30, 2015, and thereafter with the annual report.

ii. Timeline for Reporting Comparative Data

The nine Banks and the Office of Finance requested that the comparison of board diversity data be voluntary for the first annual report following the effective date of the regulation. The commenters requested that the first mandatory year-over-year comparison be required in the 2015 annual report, which will be filed in March 2016. FHFA agrees with these requests and does not expect the Banks and the Office of Finance to submit a comparative report until March 2016.

The **Federal Register** explanation of the proposed rule stated that the initial aggregate demographic data reported would provide a baseline to analyze future trends.[45] The Banks and the Office of Finance will be able to use the baseline data submitted by September 30, 2015, to compare with the data submitted in the March 1, 2016 report. Although not required, a Bank or the Office of Finance may voluntarily submit and compare any historical board demographic data it has to date collected and submitted in the report due by September 30, 2015. FHFA determined that this clarification did not require a change to the final rule.

iii. Use of Data

The Greenlining Institute recommended that FHFA make the annual minority and women inclusion reports of the Banks and the Office of Finance available to the public. The commenter believes that the public's confidence in the progress of the respective OMWIs of the Banks and the Office of Finance in advancing diversity will be limited until the annual reports are made public.

FHFA does not adopt this recommendation in the final rule. FHFA reiterates its position as stated in the **Federal Register** explanation of the final part 1207 regulations:

FHFA considers the reports and data to be related to examinations and examination, operation, or conditions reports. In general, FHFA will consider all the information and the data attributed to a particular regulated entity to be non-public, subject to the Freedom of Information Act Exemption (b)(8) and to the examination privilege. The agency does not intend to make attributed information public. However, FHFA intends to use the information and data arrayed or aggregated in a variety of ways, without attribution to specific institutions, in order to identify trends, success or lack of success, or best practices each regulated entity can use to assess or improve its own programs. Additionally, FHFA may use such unattributed information in various formats to inform the public on such trends, success, lack of success and best practices among the regulated entities.[46]

The commenter also noted that it is standard practice for FHFA, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the U.S. Securities and Exchange Commission, the Federal Reserve Board of Governors, and the U.S. Department of the Treasury to make reports on their respective minority and women inclusion activities available to the public. The commenter appears to be referring to the agency statutory reporting requirements under section 342(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), which apply to most federal financial regulatory agencies.[47] Such reports are required to be submitted to Congress and include certain information related to the agencies' minority and women inclusion programs.[48] FHFA also makes public its agency annual minority and women inclusion report. However, the statutory reporting requirements under section 1319A of the Safety and Soundness Act apply only to entities regulated by FHFA.[49] Since there are no comparable reporting requirements for the regulated entities of the other financial regulatory agencies, those agencies do not receive minority and women inclusion reports from their regulated entities. FHFA will consider including aggregated data related to its regulated entities in the annual minority and women inclusion report it prepares in accordance with section 342(e) of Dodd-Frank.

III. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing this final rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that the rule would not adversely affect any of the above factors.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[50] Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, or impose an information collection requirement, unless it displays a currently valid control number assigned by OMB.[51] This final rule contains a new information collection requirement, which is described below.

As required by the PRA, FHFA requested comments on the new collection of information in the proposed rule.[52] The agency received no comments on that issue. As is also required by the PRA, FHFA submitted an analysis of the new collection of information to OMB for review in conjunction with the publication of the proposed rule.[53] OMB assigned to this collection of information control number 2590–0014, but has not yet approved the collection; however, FHFA expects OMB will do so by the effective date of the final rule.

Summary: Under § 1207.23(b)(9)(i), each Bank and the Office of Finance are required to request annually that each member of its board of directors provide, on a voluntary basis, self-identification of his or her demographic classification (using the same minority

[45] *See* 79 FR 35961–35962 (June 25, 2014).

[46] 75 FR 81400 (December 28, 2010).

[47] Section 342(e) of Public Law 111–203, July 21, 2010, 12 U.S.C. 5452(e).

[48] *Id.*

[49] 12 U.S.C. 4520(d).

[50] *See* 44 U.S.C. 3507(a) and (d).

[51] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

[52] *See* 44 U.S.C. 3507(a)(1)(D); 5 CFR 1320.11(a).

[53] *See* 44 U.S.C. 3507(d)(1)(A); 5 CFR 1320.11(b).

and gender classifications as those used on the Form EEO–1), without including personally identifiable information. Sections 1207.23(b)(9) and 1207.22(c) require that each Bank and the Office of Finance submit the baseline board demographic information collected to FHFA no later than September 30, 2015, and thereafter the information be included as part of the annual reports they are already required to submit under existing part 1207.

Use: FHFA will use the information collected under § 1207.23(b)(9)(i) to assess the effectiveness of the policies and procedures that each of the Banks and the Office of Finance is required to implement to promote diversity in all of its business and activities ''at all levels'' and, specifically, to encourage diversity in the nomination and solicitation of nominees for members of its boards of directors. FHFA will also use the information to establish a baseline to analyze future trends relating to the diversity of the boards of directors of the Banks and the Office of Finance.

Respondents: Respondents will be the approximately 210 individuals serving on the boards of directors of the Banks and the Office of Finance in any given year.

Frequency: The information will be collected annually.

Annual Burden Estimate: FHFA estimates the total annualized hour burden for all respondents to the proposed information collection to be 21 hours. FHFA estimates that an average of 210 board directors will provide information annually and that each response will take approximately 0.1 hours on average (210 respondents × 0.1 hours per response = 21 hours). There will be no annualized cost to the Federal government.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Banks and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1207

Discrimination, Diversity, Equal employment opportunity, Minority businesses, Office of Finance, Outreach, Regulated entities.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, FHFA amends part 1207 of title 12 of the Code of Federal Regulations as follows:

PART 1207—MINORITY AND WOMEN INCLUSION

■ 1. The authority citation for part 1207 continues to read as follows:

Authority: 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

■ 2. Amend § 1207.22 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 1207.22 Regulated entity and Office of Finance reports.

* * * * *

(c) * * * The data required to be reported by § 1207.23(b)(9) shall be submitted no later than September 30, 2015, and thereafter included in each annual report.

* * * * *

■ 3. Amend § 1207.23 as follows:

■ a. Redesignate paragraphs (b)(9) through (19) as paragraphs (b)(10) through (20); and

■ b. Add new paragraph (b)(9) and revise newly redesignated paragraph (b)(10) to read as follows:

§ 1207.23 Annual reports—format and contents.

* * * * *

(b) * * *

(9)(i) Data showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance—

(A) Using data collected by each Bank and the Office of Finance through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information;

(B) Using the same classifications as those on the Form EEO–1; and

(ii) A description of the outreach activities and strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on boards of directors of the Banks (consistent with 12 CFR 1261.9) and the Office of Finance;

(10) A comparison of the data reported by Fannie Mae and Freddie Mac under paragraphs (b)(1) through (8) of this section, and by the Banks and the Office of Finance under paragraphs (b)(1) through (9) of this section, to such data as reported in the previous year together with a narrative analysis;

* * * * *

Dated: April 28, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2015–10374 Filed 5–1–15; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2011–1136; Amdt. Nos. 121–371A and 135–132A]

RIN 2120–AJ33

Air Carrier Contract Maintenance Requirements; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published on March 4, 2015 (80 FR 11537). In that rule, the FAA amended its maintenance regulations for domestic, flag, and supplemental operations, and for commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The FAA originally proposed to make the effective date of the rule one year after its publication date to give affected operators time to come into compliance with the new requirements, and to allow the FAA time to review information submitted by the operators under the rule. However, in the final rule, the FAA inadvertently overlooked the proposed one-year compliance time, and included an effective date of 60 days after publication. This document corrects the effective date of that document.

DATES: This correction is effective on May 4, 2015. The effective date of the final rule published March 4, 2015 (80 FR 11537), is corrected to March 4, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Wende T. DiMuro, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1685; email *wende.t.dimuro@faa.gov.*

For legal questions concerning this action, contact Edmund Averman, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3147, email *ed.averman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2015, the FAA published a final rule entitled, ''Air Carrier Contract Maintenance Requirements'' (80 FR 11537).

In that final rule, the FAA revised its maintenance regulations for domestic, flag, and supplemental operations, and for commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The new rules require affected air carriers and operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA, and to include them in their maintenance manuals. The rules also require the air carriers and operators to provide a list to the FAA of all persons with whom they contract their maintenance, which also must include the physical address where the work will be carried out and a description of the type of work that is to be carried out at each location.

In the notice of proposed rulemaking (NPRM) (77 FR 67584; Nov. 13, 2012), the FAA proposed to make the effective date one year after the publication of the final rule. The stated reason for this was that the agency recognized that the affected operators would need time to fully develop the policies, procedures, methods, and instructions for contract maintenance and to provide them in an acceptable format to the FAA. We also noted that operators would need time to prepare the list with the required information of their contract maintenance providers and to provide them in an acceptable format to their Certificate Holding District Offices (77 FR 67587). The FAA also noted that it would need time to review the information submitted by the operators. In publishing the final rule, the FAA inadvertently overlooked this proposed one-year compliance time, and included an effective date of 60 days after publication. This document corrects that oversight so that the effective date is one year after the publication of the final rule, or March 4, 2016.

Correction

In FR Doc. 2015–04179, beginning on page 11537 in the **Federal Register** of March 4, 2015, make the following corrections:

Correction

1. On page 11537, in the second column, in the paragraph entitled ''**DATES:**'', correct ''May 4, 2015'' to read ''March 4, 2016.''

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on April 29, 2015.

John Barbagallo,

Acting Director, Flight Standards Office.

[FR Doc. 2015–10423 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[CPSC Docket No. CPSC–2014–0024]

Substantial Product Hazard List: Seasonal and Decorative Lighting Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') is issuing a final rule to specify that seasonal and decorative lighting products that do not contain any one of three readily observable characteristics (minimum wire size, sufficient strain relief, or overcurrent protection), as addressed in a voluntary standard, are deemed a substantial product hazard under the Consumer Product Safety Act (''CPSA''). Additionally, the Commission is making a technical amendment to reformat incorporations by reference in this part.

DATES: *Effective date:* The rule takes effect on June 3, 2015. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 3, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Kroh, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–987–7886; *mkroh@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

A. Statutory Authority

Section 223 of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), amended section 15 of the CPSA, 15 U.S.C. 2064, to add a new subsection (j). Section 15(j) of the CPSA provides the Commission with the authority to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence are deemed a substantial product hazard under section 15(a)(2) of the CPSA. Section 15(a)(2) of the CPSA defines a ''substantial product hazard,'' in relevant part, as a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. A rule under section 15(j) of the CPSA (a ''15(j) rule'') is not a consumer product safety rule that imposes performance or labeling requirements for newly manufactured products. Rather, a 15(j) rule is a Commission determination of a product defect based upon noncompliance with specific product characteristics that are addressed in an effective voluntary standard. For the Commission to issue a 15(j) rule, the product characteristics involved must be ''readily observable'' and have been addressed by a voluntary standard. Moreover, the voluntary standard must be effective in reducing the risk of injury associated with the consumer products, and there must be substantial compliance with the voluntary standard.

B. Background

On October 16, 2014, the Commission issued a notice of proposed rulemaking (''NPR'') in the **Federal Register** to amend the substantial product hazard list in 16 CFR part 1120 (''part 1120'') to add seasonal and decorative lighting products that lack certain readily observable safety characteristics addressed by a voluntary standard because such products pose a risk of electrical shock or fire. 79 FR 62081. The comment period on the proposed rule closed on December 30, 2014. As detailed in section II of this preamble, the Commission received 62 comments on the proposed rule.

The Commission is now issuing a final rule to amend part 1120 by adding three readily observable characteristics of seasonal and decorative lighting products: (1) Minimum wire size; (2) sufficient strain relief; and (3) overcurrent protection. After reviewing the comments, the Commission made

two clarifications in the final rule to define more clearly products that do not fall within the scope of the rule. Additionally, based on the comments, the Commission has corrected a citation to Underwriters Laboratories (''UL''), *Standard for Safety for Seasonal and Holiday Decorative Products,* UL 588, 18th Edition, approved on August 21, 2000 (''UL 588''), in the final rule. As of the effective date of this rule, seasonal and decorative lighting products that do not contain any one of these three readily observable characteristics, as set forth in UL 588, are deemed to create a substantial product hazard under section 15(a)(2) of the CPSA.

C. Seasonal and Decorative Lighting Products

The final rule uses the phrase ''seasonal and decorative lighting products'' to identify the lighting products that are within the scope of the rule. The final rule defines ''seasonal and decorative lighting products'' consistent with the description of products subject to UL 588, as set forth in section 1 of UL 588. ''Seasonal and decorative lighting products'' are portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120-volt input voltage rating. Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: Battery-operated products; solar-powered products; products that operate from a transformer or low-voltage power supply; flexible lighting products incorporating non-replaceable series and series/parallel-connected lamps enclosed within a flexible polymeric tube or extrusion; and portable electric lamps that are used to illuminate seasonal decorations.

This definition of ''seasonal and decorative lighting products'' is adapted from descriptions of lighting products defined in section 1 of UL 588. All in-scope products are covered by UL 588. Lighting products within the scope of the rule are typically used seasonally and provide only decorative lumination. The products typically are displayed for a relatively short period of time and are then removed and stored until needed again. UL 588 section 2.43 defines the term ''seasonal (holiday) product'' as: ''[a] product painted in colors to suggest a holiday theme or a snow covering, a figure in a holiday costume, or any decoration associated with a holiday or particular season of the year.'' UL 588 defines ''decorative light products'' (decorative outfits) as factory-assembled, electrically powered units providing a seasonal or holiday decorative display having illumination or other decorative effects. A decorative product may contain a lighting string as part of the decorative illumination. A lighting string provided with decorative covers over the lamps is a decorative outfit. If not constructed properly, lighting powered by 120 volts can be damaged easily and can pose a risk of electrical shock or fire.

Lighting products that are excluded from the scope of the rule are subject to different voluntary standards or do not present the same risk of injury. Based on the comments to the proposed rule, the final rule clarifies that ''solar-powered products'' are not within the scope of the rule because solar-powered seasonal lights are not connected to a 120-volt branch circuit and do not present the same risk of injury due to shock and fire. Additionally, the final rule clarifies the type of tube lighting that is not within the scope of the rule. The proposed rule used the phrase ''flexible tube lighting strings of lights intended for illumination.'' The final rule replaces this phrase with: ''flexible lighting products incorporating non-replaceable series and series/parallel connected lamps enclosed within a flexible polymeric tube or extrusion.'' The description of tube lighting was revised to clarify that such tube lighting is not covered by UL 588 but is covered by another UL standard, UL 2388 Flexible Lighting Products. This clarification is not intended to alter the scope of products covered by the rule; the revision is intended to clarify that flexible lighting products covered by UL 2388 are not within the scope of the rule. Staff Briefing Package: Final Rule to Amend 16 CFR part 1120 to Add Seasonal and Decorative Lighting Products, dated April 22, 2015 (''Staff Final Rule Briefing Package'') at 3, available at: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Final-Rule-to-Amend-Substantial-Product-Hazard-List-to-Include-Seasonal-and-Decorative-Lighting-Products.pdf.*

D. Applicable Voluntary Standard

UL 588–2000 is the current voluntary standard applicable to seasonal and decorative lighting products. UL 588 has been updated over the years to address various safety issues to make seasonal and decorative lighting products safer, *see* 79 FR 62083; Staff's Briefing Package on Seasonal and Decorative Lighting Products, dated October 2, 2014 (''Staff NPR Briefing Package''), Tab B, Abbreviated History of Seasonal and Decorative Lighting Products and the Associated UL Standard, at: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/ProposedRuletoAmendSubstantialProductHazardListtoIncludeSeasonalandDecorativeLightingProducts.pdf.* Specifically, UL 588, made effective on January 1, 1997, set forth the current requirements for overcurrent protection and minimum wire size; and the current strain relief requirement has been in effect since 1994.

Table 2 in the preamble to the NPR, at 79 FR at 62083, summarized the readily observable characteristics for seasonal and decorative lighting products. Table 2 was intended to present a summary of the relevant provisions of UL 588. As one commenter noted, the ''strain relief'' column shown in Table 2 in the preamble to the NPR cited SB16 of UL 588, instead of section SB15, and showed the strain relief load as 24 lbs. instead of 20 lbs. Table 1, below, is a revised version of Table 2 from the preamble to the NPR. Table 1 shows the correct citation to section SB15 of UL 588 and the correct strain relief loads. Staff Final Rule Briefing Package at 3–4.

TABLE 1—READILY OBSERVABLE CHARACTERISTICS FOR SEASONAL AND DECORATIVE LIGHTING PRODUCTS

Seasonal and decorative lighting products	Readily observable characteristics			
	Minimum wire size (AWG) *UL 588 Section 6*	Sufficient strain relief (load weight)		Overcurrent protection qty. *UL 588 Section 7*
		Plugs/load fittings *UL 588 Sections 15 and 71*	Lampholders *UL 588 Sections 79 and SB15*	
Series-connected lighting product:				
With Load Fitting	20 (Polarized Plug)	20 lbs (smaller than 18 AWG)	20	1
	22 (Non-Polarized Plug)		8	2
Without Load Fitting	22 (Polarized Plug)		8	1
	22 (Non-Polarized Plug		8	2
Parallel-connected light product:				
With or Without Load Fitting	20 (XTW), 18 (all others)	20 lbs. (20 AWG)	20	1
	All Polarized Plugs	30 lbs. (18 AWG).		

E. Risk of Injury

1. Electrocution and Fire Hazards

The preamble to the NPR explained that consumers can be seriously injured or killed by electrical shocks or fires if seasonal and decorative lighting products are not made using minimum wire size, sufficient strain reliefs, or overcurrent protection. 79 FR at 62083–84. Lighting products that conform to the minimum wire size requirement in UL 588 will support the product's electrical load without causing overheating. Additionally, lighting products that conform to the minimum wire size requirement provide the necessary mechanical strength to endure handling and other forces imposed on a seasonal lighting product during expected use of the product. Likewise, lighting products that conform to the strain relief requirements in UL 588 will endure use, including pulling and twisting the product, without mechanical damage to the electrical connections. Damaged electrical connections, such as broken strands of copper conductor inside the insulated wiring, could cause overheating (leading to a fire), despite overcurrent protection, or separation of wires from their terminal connections, which could expose bare energized conductors leading to electrical shock. Finally, UL 588's requirements for overcurrent protection prevent products from overheating and melting due to faults, damage, or excessive loads. Such failures carry a potential risk of fire.

2. Incident Data

For the NPR, CPSC staff conducted a search of the Injury or Potential Injury Database (''IPII''), National Electronic Injury Surveillance System (''NEISS''), and the Death Certificate Database (''DTHS'') for incidents that involved seasonal and decorative lighting products reported between 1980 and May 2014. CPSC staff has updated this data and found a total of 133 fatal incidents causing 258 deaths, and 1,405 nonfatal incidents that involved seasonal and decorative lighting products that were in-scope and that occurred between 1980 and 2013.[1] For the final rule, staff searched for in-scope incidents reported from January 2014 through March 2015. CPSC staff found an additional 25 in-scope incidents that occurred in 2014, and staff identified seven incidents that occurred in 2015. All of the 25 incidents in 2014 were nonfatal incidents. One of the seven incidents in 2015 was a fatal incident that caused one death.

Table 2 shows the annual average number of incidents for five different periods for each of the fatal incidents, deaths, and nonfatal incidents. The 35-year period is broken up into five, 7-year periods. Reporting may not be complete for the most recent period because sometimes CPSC receives reports of incidents years after they have occurred. Note that the average number of incidents and deaths has declined over the 35-year period represented in Table 2. *See* Tab E of Staff Final Rule Briefing Package.

TABLE 2—SEASONAL AND DECORATIVE LIGHTING PRODUCT ANNUAL AVERAGE OF FATAL INCIDENTS, DEATHS, AND NONFATAL INCIDENTS FROM 1980–2014

Years	Fatal incidents	Deaths	Nonfatal incidents
1980–1986	6.7	12.6	54.1
1987–1993	6.3	13.6	40.9
1994–2000	2.9	5.9	37.4
2001–2007	2.3	3.9	38.6
2008–2014	0.9	1.0	33.3

F. Compliance Efforts To Address the Hazard

As noted in the preamble to the NPR, in numerous instances, CPSC staff has considered the absence of one or more of three readily observable characteristics (minimum wire size, sufficient strain relief, and overcurrent protection) to present a substantial product hazard and has sought appropriate corrective action to prevent injury to the public. 79 FR at 62084. Since the Commission published the NPR (from September 2014 to February 2015), CPSC has not conducted any recalls of seasonal and decorative lighting products, and identified 11 shipments at import involving a total of

[1] Staff has updated incident data from 1980 to 2013 to include retailer reports.

approximately 37,000 lighting units, where the seasonal and decorative lighting products may not comply with UL 588. *See* Tab D of Staff Final Rule Briefing Package.

II. Summary of Comments on the Proposed Rule and CPSC's Responses

The Commission received 62 comments and questions in response to the NPR. Substantive comments from several manufacturers expressed general support for the proposed rule, while the consumer commenters were generally opposed to the NPR. Commenters who opposed the rule often appeared to misunderstand the nature of the rulemaking, the Commission's authority to issue such a rule, and the effect of such a rule on industry and consumers. The Commission received one comment that addressed technical issues associated with UL 588. We summarize the comments and the Commission's responses below. Three clarifications were made in the final rule based on the comments, described in sections I.C and I.D of this preamble, and in responses to comments 14, 15, and 18.

A. General Comments

Comment 1: Many commenters argued that the proposed rule represents government waste, government overreach, or would result in a ''waste of money'' because the incident data do not demonstrate a relationship between the incident data and gaps in the UL standard.

Response 1: The Commission disagrees with these commenters. The CPSC's mission is to protect consumers from unreasonable risks of injury or death from consumer products. The rule would further this mission by allowing staff to remove more effectively seasonal and decorative lighting products from commerce if these products present a risk of fire or electrical shock to consumers. The rule will not result in waste, nor will the rule increase costs. In fact, the rule should decrease CPSC's costs associated with an existing practice of determining that seasonal and decorative lighting products that do not conform to UL 588 present a defect that rises to a substantial product hazard.

Currently, when CPSC staff encounters seasonal and decorative lighting products that do not appear to meet the requirements of UL 588, field and import staff must collect samples of the products and send them to CPSC's National Product Testing and Evaluation Center (''NPTEC'') for further testing. CPSC engineers evaluate and test the samples and provide their assessment to Compliance staff. Compliance staff, relying on CPSC technical staff's assessment, makes a preliminary determination of whether the product presents a substantial product hazard. If Compliance staff makes a preliminary determination of a substantial product hazard, CPSC staff informs the manufacturer or importer of the defective products. Compliance staff then proceeds to negotiate seizure, destruction, or a recall (or some combination of actions) with the firm. Firms may dispute CPSC staff's preliminary determination of a substantial product hazard for failure to conform to UL 588, which can add delay in removing defective products from the market and increase CPSC staff's costs related to supporting a finding of a substantial product hazard.

When nonconforming seasonal and decorative lighting products are identified, CPSC staff must address with each manufacturer or importer the missing safety requirements from UL 588 that staff determined created a substantial product hazard. This process can be time-consuming and resource intensive. Congress has provided the Commission with the ability to streamline the administrative process of substantial product hazard determinations if certain criteria are met. Section 15(j) of the CPSA allows the Commission through a rulemaking to specify for consumer products, or a class of consumer products, characteristics whose presence or absence shall be deemed a substantial product hazard under section 15(a)(2) of the CPSA. A ''substantial product hazard'' is a defined term in our statute. Failure to comply with a consumer product safety rule is one way a product can present a substantial product hazard under section 15(a)(1) of the CPSA. A hazard addressed under section 15(j) is deemed to be ''a product defect which (because of the pattern of defect, the number of defective product distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public'' under section 15(a)(2).

A rule under section 15(j) of the CPSA is not a consumer product safety rule. Further, the Commission is not defining mandatory requirements for seasonal and decorative lighting products that must be tested and certified to a regulation, as a rule issued under sections 7 and 9 of the CPSA would require. The Commission is not required to provide incident data for a rule under section 15(j) of the CPSA to demonstrate ''gaps'' in the UL standard, because the rule will not impose additional requirements on seasonal and decorative lighting products beyond the identified three readily observable characteristics embodied in UL 588. Instead, the Commission is determining that seasonal and decorative lighting products that do not conform to three elements of the voluntary standard, UL 588, have a product defect that presents a substantial risk of injury to the public. A substantial product hazard determination under section 15(a)(2) of the CPSA seeks to remove already-manufactured defective products from the stream of commerce.

The Commission can only determine that products that do not conform to a voluntary standard present a substantial product hazard under section 15(j) of the CPSA if four criteria are met:

- The characteristics involved must be ''readily observable'';
- the characteristics must be addressed by a voluntary standard;
- the voluntary standard must be effective in reducing the risk of injury associated with the consumer products; and
- there must be substantial compliance with the voluntary standard.

Essentially, when a voluntary standard is working effectively to reduce a risk of injury to the public, the Commission can rely on the voluntary standard and take enforcement action to remove products from the stream of commerce when products do not comply with that voluntary standard. The purpose of the NPR was to provide notice to the public that the Commission believes that UL 588 is an effective voluntary standard. When CPSC staff finds products in the stream of commerce that do not comply with one or more of three readily observable safety characteristics, which are defined in UL 588, the Commission believes that those products are defective and present a substantial risk of injury, fire and electrical shock.

Codifying that the absence of any of three safety characteristics for seasonal and decorative lighting products constitutes a substantial product hazard should streamline CPSC's enforcement efforts. Once the rule is final, CPSC will no longer need to rely on a staff preliminary determination of a substantial product hazard, and re-address this issue with each importer or manufacturer in each instance. Instead, CPSC can rely on the Commission's determination of a substantial product hazard for seasonal and decorative lighting products that are missing any of three readily observable characteristics, and then staff can proceed directly to negotiating a recall or seizure of the products without delay. Finally, when noncompliant lighting products are

found at the ports, CPSC can rely on the rule to request that Customs and Border Protection (''CBP'') seize the defective products through its authority under the Tariff Act. This streamlined process should reduce Commission staff and the monetary resources required to prevent defective products from entering the market.

Comment 2: Many commenters stated that existing standards, such as UL standards, are sufficient in ''regulating'' seasonal lights and that the agency did not provide a rational basis for selecting seasonal and decorative lighting products for regulation. Another commenter opposed codifying the UL standard, arguing that codifying the standard would ''ossify'' the voluntary standards process and make the UL standard ''rigid,'' more difficult to improve, and ultimately make the public less safe.

Response 2: This proceeding concerns a rule under section 15(j) of the CPSA and would not codify UL 588 or any other standard. Rather, under the rule, seasonal and decorative lighting products that do not have specified characteristics that conform to UL 588 would be considered to present a substantial product hazard. This means that such products could be stopped at the ports or otherwise prevented from distribution in the United States. The rule would not replace UL 588 or ''ossify'' the standard; rather, the rule would work in tandem with the UL standard to help provide safer products to consumers. If UL revises the referenced provisions of UL 588 in the future, the Commission can revise the rule to reference the updated version. Pages 62083 and 62084 of the NPR provided a rational basis for selecting seasonal and decorative lighting products. Lighting products that lack minimum safety characteristics pose a substantial risk of injury to consumers, and the Commission has the authority and obligation to remove such defective products from the stream of commerce.

Comment 3: One commenter stated that the NPR violated the Administrative Procedure Act (''APA''), and was ''on its face arbitrary and capricious and without any reasonable foundation'' because no rational basis was described in the proposed rule for a new federal regulation on seasonal and decorative lighting products. Many commenters indicated that they considered the rule unnecessary, when CPSC's own data demonstrate that the UL standard appears to be effective at reducing the risk of injury associated with seasonal and decorative lighting products. Some commenters stated that the proposed rule does not describe a ''substantial product hazard'' that needs to be addressed by a regulation, noting that the UL standard has already addressed the hazards associated with seasonal and decorative lighting products.

Response 3: The commenters appear to misunderstand the nature and purpose of the NPR, as well as the Commission's authority to issue a rule under section 15(j) of the CPSA. The Commission disagrees that the NPR violated the APA and is arbitrary and capricious. The NPR provides adequate rationale for the proposed rule and meets the requirements of section 553(b) of the APA, which requires that a proposed rule:

- Be published in the **Federal Register**;
- provide a statement of the time, place, and nature of public rule making proceedings;
- reference the legal authority under which the rule is proposed; and
- provide either the terms or substance of the proposed rule or a description of the subjects and issues involved.

As discussed in the NPR, seasonal and decorative lighting products have a history of causing deaths and injury. However, the Commission agrees with the commenters that UL 588 effectively addresses the risks caused by insufficient wire size, inadequate strain relief, and lack of overcurrent protection. UL 588 addresses these issues because the absence of these minimum safety characteristics poses a risk of injury, fire, and electric shock to consumers. The Commission's 15(j) rule recognizes that products that do not conform to UL 588 regarding minimum wire size, sufficient strain relief, and overcurrent protection, present a substantial product hazard.

A rule under section 15(j) of the CPSA is not a consumer product safety rule, but rather, is a Commission determination of a substantial product hazard. No injury data are required to find that a product presents a substantial product hazard under section 15(a)(2) of the CPSA. Instead, under section 15(a)(2), products are evaluated for defects that have the potential to cause a substantial risk of injury to the public. Even if the Commission has no reported injuries, the Commission could still find that a product has a defect which creates a substantial risk of injury to the public.

Comment 4: One commenter stated that CPSC misused the data cited in the proposed rule, making three fundamental errors:

- Implicitly assuming that no older versions of lighting products manufactured before 2000 are in use, which CPSC allegedly uses to show that UL is only partially effective. The commenter asserts that lighting products are used for many years;
- failing to show any recent deaths or injuries since 2000 when UL was allegedly last updated; and
- failing to show that any deaths associated with lighting products were caused by product defects related to the three properties that the UL standards address (safe wire size, safety fuse, and strain protection).

The commenter stated that the proposed rule provides no rational basis for assuming that any residual hazard related to the UL standards exists.

Response 4: This commenter also seems to misunderstand the 15(j) rule. The data presented in the NPR are intended to demonstrate the effectiveness of the voluntary standard, UL 588, not that additional regulation is necessary because UL 588 is only partially effective.

Comment 5: One commenter requested confirmation that current certification markings from UL, Intertek Co (''ETL''), or the CSA Group, or products carrying a listing, are considered to be in conformance with these requirements and the proposed rule does not require any paperwork, such as certificates or permits.

Response 5: The Commission agrees that, unless an importer or retailer has reason to believe that UL, ETL, or CSA certification markings are counterfeit, such marks should indicate compliance with UL 588. Because a rule under section 15(j) of the CPSA is not a consumer product safety rule, a final rule will not impose additional paperwork such as certificates of compliance on importers or manufacturers.

Comment 6: One commenter questioned the definition of ''readily observable,'' and two commenters questioned whether all three readily observable characteristics need to be met.

Response 6: All three readily observable characteristics on a seasonal and decorative lighting product must be in conformance with UL 588. Under the rule, if one or more characteristics are missing, the product presents a substantial product hazard under section 15(a)(2) of the CPSA.

The Commission has not defined the term ''readily observable,'' preferring instead to evaluate the concept on a case-by-case basis. The proposed rule states:

> The Commission did not define a ''readily observable'' characteristic in either [previous]

rule. In the proposed drawstring rule (75 FR 27497, 27499, May 17, 2010), the Commission found that the requirements detailed in the relevant voluntary standard could be evaluated with ''simple manipulations of the garment, simple measurements of portions of the garments, and unimpeded visual observation.'' The Commission stated: ''more complicated or difficult actions to determine the presence or absence of defined product characteristics also may be consistent with 'readily observable.' '' Finally, the Commission stated its intent to evaluate ''readily observable'' characteristics on a case-by-case basis.

75 FR at 27499. The Commission considers the three characteristics of seasonal and decorative lighting products described in the rule to be readily observable, consistent with the Commission's previous statement.

Comment 7: One commenter questioned how CPSC will enforce the requirements for imported products that are proposed in the NPR.

Response 7: The Commission anticipates continuing the existing enforcement policy at ports of entry and at retail outlets, at least in the near future. Currently, CPSC identifies seasonal lighting products that lack certification marks or that appear to have irregular or counterfeit certification marks or that have other characteristics that might suggest noncompliance with applicable standards. After adoption of the rule, CPSC would evaluate such products to assess whether the products meet all three readily observable safety characteristics. If the products do not meet every one of the three readily observable safety characteristics, CPSC generally anticipates requesting that CBP detain the product if offered for importation. Additionally, CPSC practice is to inform the manufacturer or importer of the defect. Depending on the facts and circumstances, other legally-authorized measures may be taken.

Comment 8: One commenter asked whether the readily observable characteristics apply to both indoor and outdoor seasonal and decorative lighting products.

Response 8: The rule applies to both indoor and outdoor seasonal and decorative lighting products. The three readily observable characteristics are independent of the environment for which the products are rated.

Comment 9: Some commenters generally opposed the NPR, stating reasons such as the ''lie of global warming,'' limiting electrical power consumption by consumers, or that CPSC should regulate other types of products.

Response 9: These comments are out of scope for this rulemaking.

B. Comments on Economic Issues

Comment 10: To demonstrate the potential safety benefits of the proposal, one commenter who supported the NPR suggested that the CPSC estimate the societal costs of fires and electrocutions associated with holiday and seasonal lights. Several commenters opposing the proposed rule stated that the likely safety benefits of the proposal would be small.

Response 10: The estimated numbers and societal costs of deaths, injuries, and property damage associated with seasonal and decorative lighting-related fires and electrocutions are very small, and generally, the numbers have declined to near zero in recent years, consistent with safety improvements made over time to the voluntary standard, UL 588. The rule is not designed to yield further safety benefits; rather, the rule would maintain the current high level of safety and help prevent distribution of nonconforming, seasonal and decorative lighting products that present a substantial product hazard.

Comment 11: Eleven consumer commenters opposing the proposed rule stated that the rule could impose compliance costs on industry, and that any such costs should be weighed against the minimal likely safety benefits of a rule. One commenter stated that the proposed rule failed to adequately address the full scope of the legal and financial impacts of the regulation. Four commenters suggested that cost increases would result in retail price increases. One commenter asked whether the CPSC could justify ''millions of dollars'' in costs.

Response 11: The final rule does not impose any new design, manufacturing, testing, certification, reporting, labeling, or other cost burdens on industry. Rather than add ''millions of dollars,'' as the commenter posited, because the rule is predicated on an existing voluntary standard, the cost of the rule should be essentially zero. In the NPR, the Commission estimated that the level of conformance to the existing voluntary standard is well in excess of 90 percent. The Commission has identified very few nonconforming seasonal and decorative lighting products on the market, even among the lowest-priced products. Thus, no significant wholesale or retail price increases are likely to occur as a result of finalizing the rule. To the extent that any importers market nonconforming seasonal and decorative lighting products, these firms could incur minimal costs of up to a few cents per typical 50-light string to incorporate the correct wire size, proper strain relief, and overcurrent protection. Nonconforming goods, however, are already subject to CPSC enforcement action, including recall, seizure, or forfeiture upon importation. Thus, because no changes to products or importation practices will be needed, the rule will likely have little, if any, impact on costs or consumer choice.

As noted previously, the final rule will create efficiencies for the agency's enforcement programs.

Comment 12: One commenter opposed to the NPR asserted that a CPSC rule would be duplicative of other existing regulations (presumably referring to the voluntary standard), thereby impacting costs and consumer choices.

Response 12: The final rule designates as a substantial product hazard any seasonal and decorative lighting products that do not conform to three elements of the existing voluntary standard, UL 588. This is consistent with current CPSC enforcement practice. The rule will impose no new requirements or cost burdens on industry. Similarly, because no products will have to be discontinued or withdrawn from the market, the final rule will not affect consumer choice.

Comment 13: One commenter opposed to the NPR questioned whether the proposed rule would maintain ''fair and equitable market access for trade partners,'' and whether the Commission had explored less restrictive regulatory alternatives.

Response 13: The final rule is not expected to deny or restrict market access in any way. All known products subject to a final rule are imported. Because virtually all such products are estimated to conform to the voluntary standard already, no new restrictions on importation into the United States will occur. Any noncomplying products will be subject to CPSC enforcement action. This has been the case in the past, and this will continue to be the CPSC's practice even without the rule. No regulatory alternatives exist that would be less restrictive to industry. Under the rule, business practices will not have to change, and therefore, no restrictions on trade will result.

C. Technical Comments

Comment 14: One commenter asked the Commission to affirm that the proposed rule would not apply to the following:

- Battery-operated products.
- Solar-powered products (either direct powered solar, or one with a storage system that is used when the sun is not out, such as a rechargeable battery to power the lights).

• Transformer or low-voltage power supplied products, such as adaptor-powered products that use a low voltage Class 2 power source or ITE power source, that are third party certified by an NRTL lab.

• Flexible Lighting Products, as covered in the scope of UL 2388 (described as ''Flexible Tube Lighting Strings'' in the proposed rule).

Response 14: The Commission agrees with the commenter that the scope of the rule is not intended to include the types of products listed above. Section 1120.2(d) of the final rule already states that battery-operated products, products that operate from a transformer or low-voltage power supply; flexible tube lighting [clarified in response 15 below] intended for illumination; and portable electric lamps that are used to illuminate seasonal decorations are all outside the scope the rule. Products listed as out of scope are excluded because they are not subject to the same types of hazards as products within the scope of the rule; or, such products are not subject to UL 588, but rather, are subject to a different voluntary standard. The definition in § 1120.2(d) of the final rule has been clarified to state that solar-powered lights are not within the scope of the rule because solar-powered seasonal lights are not connected to a 120 volt branch circuit and do not present the same risk of injury of shock and fire. Thus, § 1120.2(d) of the final rule now lists ''solar-powered products'' as outside the scope of the final rule.

Comment 15: One commenter stated that the proposed rule should clarify which products are addressed by the term ''flexible tube lighting strings'' because CPSC could be excluding products that should fall within the scope of the rule, as they are addressed in UL 588. The commenter stated that use of the term ''flexible tube lighting strings'' could describe a UL 588-covered product connected directly across a 120V supply that uses a standard string of lights placed inside a rigid or flexible tube. The commenter suggested changing the term ''flexible tube lighting strings'' to ''flexible lighting products,'' in accordance with the scope of ANSI/UL 2388, Sections 1.1 and 1.2 and add ''Flexible Lighting Products that conform with the ANSI/UL 2388 scope and definitions'' to the ''Rope, tube, ...'' listing in- ''out-of-scope'' products.

Response 15: The Commission agrees that the term ''flexible tube lighting strings'' could be misconstrued to exempt some products that are covered by UL 588. Accordingly, the definition of ''seasonal and decorative lighting products'' in § 1120.2(d) of the final rule has been changed from the phrase ''flexible tube lighting strings of lights intended for illumination'' to the phrase ''flexible lighting products incorporating non-replaceable series and series/parallel connected lamps enclosed within a flexible polymeric tube or extrusion'' to describe out-of-scope lighting products. The Commission believes that this language, taken from UL 2388, the voluntary standard that applies to flexible lighting, will clarify that flexible lighting products subject to UL 2388 are not within the scope of the rule. This clarification is not intended to alter the scope of products covered by the rule; the revision merely clarifies that flexible tube lighting products covered by UL 2388 are not within the scope of the rule.

Comment 16: One commenter asked for confirmation that seasonal and decorative lighting products that are third party certified to ANSI/UL 588 by a Nationally Recognized Testing Laboratory (''NRTL''), such as UL, CSA, or ETL, ''would be considered in compliance with this rule and would not require further review.'' Additionally, the commenter requested confirmation that products such as a pre-lit artificial tree, or a pre-lit artificial wreath, as long as the decorative lighting (for example, a 120V cord connected incandescent or LED light string that is series or parallel connected and has push in, screw in or non-replaceable bulbs) is third party certified by an NRTL (such as UL, CSA, or ETL) to ANSI/UL 588, are considered to be in compliance with the proposed rule and would not require further review, even if the entire pre-lit artificial tree or wreath, as a whole with lights, is not UL, CSA, or ETL certified.

Response 16: According to the Occupational Health and Safety Administration (''OSHA''), an NRTL is a private sector organization recognized by OSHA to perform required product certification to electrical standard requirements:

> Each NRTL has a scope of test standards that they are recognized for, and each NRTL uses its own unique registered certification mark(s) to designate product conformance to the applicable product safety test standards. After certifying a product, the NRTL authorizes the manufacturer to apply a registered certification mark to the product. If the certification is done under the NRTL program, this mark signifies that the NRTL tested and certified the product, and that the product complies with the requirements of one or more appropriate product safety test standards. Users of the product can generally rely on the mark as evidence that the product complies with the applicable OSHA approval requirement(s) and is safe for use in the workplace.

OSHA's Web site as of February 23, 2015 (*https://www.osha.gov/dts/otpca/nrtl/*).

The Commission interprets the comment to suggest that if a product has a mark indicating certification by an NRTL, CPSC should consider the product to be compliant with the applicable provisions of UL 588 and not conduct any further review of the product. The Commission believes that products that are legitimately listed to UL 588 by an NRTL are likely to be in compliance with UL 588 and not likely to present a substantial product hazard. However, because such marks are sometimes counterfeit, CPSC will use product labeling as but one factor in its decision process when determining which products to investigate for compliance.

Regardless of labeling, CPSC may evaluate any electrical product for whether it poses a substantial product hazard. For example, CPSC staff's existing practice is to evaluate products at the ports to assess whether they present a substantial product hazard, and non-compliance to a relevant voluntary standard may provide evidence of a hazard. Even if electrical products are not subject to a rule under section 15(j) of the CPSA, CPSC field staff can collect samples of non-conforming products and send them to CPSC's lab, NPTEC, for further testing and evaluation.

Comment 17: The commenter asked why ''unlighted ornaments that replace a push-in mini-bulb'' are exempt from this rule, suggesting that these ornaments have the same fire and shock hazard as ornaments that are lighted, have the same strain relief and wire gauge requirements as lighted ornaments in UL 588, and should be treated as in-scope. He added that the only difference between lighted and unlighted ornaments of this type is that they are not required by UL 588 to have fusing.

Response 17: Table 1 in the NPR provided a non-exhaustive list of examples of lighting products that fall within, and outside of, the scope of the proposed rule. Ornaments that replace a push-in mini-bulb do not fall within the definition of products in § 1120.2(d) of the rule because these products do not have 120 volt input ratings. Additionally, in the experience of CPSC staff, ornaments, regardless of whether they are lighted or unlighted (including motorized and electronic items), have not presented the same hazard as products within the scope of the rule. In fact, CPSC has not found any such products in its archives to present a substantial product hazard.

Comment 18: One commenter pointed out a typographical error in section II of the NPR, item 2, on page 62085, ''Sufficient Strain Relief,'' of the preamble. The commenter states the correct reference for the method of strain relief testing demonstrated in the NPR should be section SB15 instead of section SB16, which also changes the strain relief load cited in Table 2 from 24 lb. weight to a 20 lb. weight. The commenter also suggested changing the reference of section 79 to paragraph 79.2 in section II of the NPR, item 2, on page 62085 because of the method of testing demonstrated in the NPR. In addition, the commenter noted that the testing method in section II of the NPR, item 2, on page 62085, ''Sufficient Strain Relief,'' is vague and unrepeatable by specifying that wire is not allowed to ''stretch,'' as the wire will normally stretch in this test. UL 588 specifies that the wire not stretch more than 1/16″ at the entry point of the wire to the lampholder, not that the wire below that point cannot stretch.

Response 18: The Commission agrees with the commenter with regard to the correct citation for strain relief requirements, and has revised the citation to UL 588 in § 1120.3(c)(2) regarding strain relief in the final rule to incorporate section SB15 of UL 588, instead of section SB16. We have also published a corrected version of the Table summarizing requirements from UL 588 in the preamble to the final rule, Table 1 in section I.D of this preamble. Table 1 updates the strain relief load from 24 lbs. to 20 lbs. and references SB15 instead of SB16. The Commission declines to revise the Table 1 to include paragraph 79.2, because the strain relief method called out in section 79 of UL 588 includes paragraph 79.2.

In the NPR, the Commission summarized the failure criteria for strain relief to demonstrate that strain relief is readily observable by hanging the appropriate weight and evaluating the results. However, the regulation text adopts the specific requirements for strain relief in UL 588. Section 1120.3(c)(2) specifies that sufficient strain relief requirements are according to UL 588 sections 15, 71, 79, and SB15 (changed from SB16 to SB 15). Although the cord is allowed to ''stretch'' within limits as permitted by UL 588 during the strain relief test, CPSC staff's experience in observing non-conforming seasonal and decorative lighting products is that such non-complying products, in an overwhelming majority of observations, tend to be constructed in a way that they fail catastrophically—the conductors shred apart, with individual strands stretching to their breaking points.

Comment 19: One commenter stated that, in Section II of the NPR, the measurement of wire size (''AWG'') as shown in Picture 3 is not a very accurate method of measurement and is intended for solid core wire, not stranded as required to be used in decorative lighting strings covered by UL 588. The commenter is concerned that using a wire gauge with stranded wire can give false positives for undersized wire, or false negatives for properly sized wires, depending on twisting and other relevant factors. The commenter states that the ANSI UL wire standard uses a different method of determining wire size by measuring the circular mil area. While the wire gauge method may be sufficient to determine the initial need for further examination, the commenter states, it should not be used as the final determination for undersize wiring.

Response 19: The final rule incorporates by reference the minimum wire size requirements in section 6 of UL 588. Section 6 of UL 588 does not state a method for determining or measuring the wire size. Accordingly, the rule does not require any particular test; it requires compliance with section 6 of UL 588 with regard to minimum wire size. The NPR provided an example of one method for measuring wire size.

The purpose of providing a picture of measuring minimum wire size in the NPR was not to favor one method of measuring wire size over another, but to demonstrate that wire size is readily observable through a direct measurement of the wire. The Commission acknowledges that other methods of directly measuring wire size exist that also can be done quickly and easily. The Commission notes that CPSC staff's experience in observing nonconforming seasonal and decorative lighting products demonstrates that such products typically fall short of conformance to wire size by a large margin, regardless of the method used to determine compliance with section 6 of UL 588.

III. Information Supporting Substantial Product Hazard Determination

A. Defined Characteristics Are Readily Observable and Addressed by UL 588

Sections 6, 7, 15, 71, 79, and SB15 of UL 588 set forth the requirements for the three readily observable characteristics in the final rule: minimum wire size, sufficient strain relief, and overcurrent protection. Table 1 in section I.D of this preamble summarizes the technical requirements for the three readily observable characteristics in UL 588. The final rule deems the absence of any one of these characteristics to be a substantial product hazard under section 15(a)(2) of the CPSA. The preamble to the NPR set forth information to support a finding that minimum wire size, sufficient strain relief, and overcurrent protection, are readily observable characteristics from UL 588. *See* 79 FR 62084–86. We summarize and update that information here.

1. Minimum Wire Size

Section 6 of UL 588 requires that series-connected lighting products have a minimum wire size of 20 or 22 AWG, depending on whether the lighting product has a load fitting, and whether the plug is polarized. Minimum wire size, as required in section 6 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be observed visually by taking a measurement of the product's bare wire. 79 FR 62084–85.

2. Sufficient Strain Relief

Sections 15, 71, 79, and SB15 of UL 588 set forth the requirements for sufficient strain relief in seasonal and decorative lighting products. Strain relief is observed in several locations: At the plugs and load fittings, as well as at the lampholders. Sufficient strain relief, as required in sections 15, 71, 79, and SB15 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be determined by suspending the applicable load from the plug, load fitting, or lampholder, and by observing for conformance with SB15 of UL 588. 79 FR at 62085–86.

3. Overcurrent Protection

Section 7 of UL 588 specifies overcurrent protection for every seasonal and decorative lighting product. Lighting products must contain at least one fuse if the plug is polarized (parallel-connected strings must have a polarized plug) or two fuses if the plug is not polarized. Overcurrent protection, as required in section 7 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be determined by a visual observation of whether the lighting product has a fuse holder containing the correct number of fuses. 79 FR at 62086.

B. Conformance to UL 588 Has Been Effective in Reducing the Risk of Injury

Conformance to sections 6, 7, 15, 71, 79, and SB15 of UL 588, as summarized in Table 1 in section I.D of this

preamble, has been effective in reducing the risk of injury from shock and fire associated with below-minimum wire size, insufficient strain relief, and lack of overcurrent protection. CPSC's incident data demonstrate that conformance to UL 588 has coincided with, and may have contributed to, a decline in the risk of injury associated with seasonal and decorative lighting products.

The preamble to the NPR reviewed the reported death and nonfatal incident data from 1980 through 2013, which demonstrated a decline during that period. *See* 79 FR at 62086–87. On January 1, 1997, UL 588's requirements for overcurrent protection and minimum wire size took effect; and the current strain relief requirement has been in effect since 1994. Table 3 lists the incidents associated with seasonal and decorative lighting products for the periods 1980–1996 and 2000–2014. The years from 1997 to 1999 would have been transitional years, where older products in consumer homes were being replaced with light strings incorporating the January 1, 1997 changes (minimum wire size and overcurrent protection) in the UL standard. The average number of deaths per year and the average number of nonfatal incidents per year were higher before 1997, and the numbers dropped after 1999. *See* Tab E of Staff Final Rule Briefing Package.

TABLE 3—INCIDENTS ASSOCIATED WITH SEASONAL AND DECORATIVE LIGHTING PRODUCTS

Period	1980–1996	2000–2014
Deaths	202	45
Nonfatal Incidents	762	545
Average Deaths per year	11.9	3.0
Average Nonfatal Incidents per year	44.8	36.3

C. Lighting Products Substantially Comply With UL 588

The Commission has not articulated a bright-line rule for substantial compliance. Rather, in the rulemaking context, the Commission has stated that the determination of substantial compliance should be made on a case-by-case basis. Seasonal and decorative lighting products' compliance with UL 588 is ''substantial,'' as that term is used in section 15(j) of the CPSA. The Commission estimates that a majority of seasonal and decorative lighting products, well in excess of 90 percent, sold for consumer use in the United States, likely conforms to UL 588. *See* 79 FR at 62088. Since issuing the NPR, CPSC has not received any information in the comments, or otherwise, that would change the estimated level of compliance with UL 588.

IV. Description of the Rule

The rule regarding seasonal and decorative lighting products creates two new paragraphs in part 1120: one defines the products covered by the rule and the other states the characteristics that must be present for the products not to present a substantial product hazard.

Definition. Section 1120.2(d) defines a ''seasonal and decorative lighting product'' as portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120 volt input voltage rating. Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: battery-operated products; solar-powered products; products that operate from a transformer or low-voltage power supply; flexible lighting products incorporating non-replaceable series and series/parallel connected lamps enclosed within a flexible polymeric tube or extrusion; and portable electric lamps that are used to illuminate seasonal decorations.

This definition is adapted from descriptions of lighting products defined in section 1 of UL 588. Lighting products within the scope of the rule are typically used seasonally (temporarily) and provide only decorative lumination. The products typically are displayed for a relatively short period of time, and then the lighting products are removed and stored until needed again. Lighting products that are excluded from the scope of the rule are subject to different voluntary standards or do not present the same risk of injury.

Substantial product hazard list. Section 1120.3(c) states that seasonal and decorative lighting products that do not conform to one or more of the following characteristics required in sections 6, 7, 15, 71, 79, and SB15 of UL 588 are deemed substantial product hazards under section 15(a)(2) of the CPSA:

(1) Minimum wire size requirements in section 6 of UL 588;

(2) sufficient strain relief requirements in sections 15, 71, 79, and SB15 of UL 588; or

(3) overcurrent protection requirements in section 7 of UL 588.

Standards incorporated by reference. Additionally, at the request of the Office of the Federal Register (''OFR''), the Commission is making a technical amendment to part 1120. This technical amendment adds a new section, 1120.4, listing all of the incorporations by reference (''IBR'') for products added to the substantial product hazard list. Thus, the IBR for hand-supported hair dryers and draw strings on children's upper outwear is moved from § 1120.3 to the new § 1120.4. No substantive change is being made to the rule regarding hand-supported hair dryers or drawstrings on children's upper outerwear. The IBR for seasonal and decorative lighting products is also included in the new § 1120.4.

Incorporation by reference. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. The OFR recently revised these regulations to require that, for a final rule, agencies must discuss, in the preamble of the rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, this preamble summarizes the relevant provisions of UL 588. Table 1 in section I.D of this preamble summarizes the requirements of UL 588. Interested persons may purchase a copy of UL 588 from UL either through UL's Web site, *www.UL.com,* or by mail at the address provided in the rule. A copy of the standard also can be inspected at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, or at NARA, as provided in the rule.

V. Commission Determination That Seasonal and Decorative Lighting Products That Lack Any One of Three Readily Observable Characteristics Present a Substantial Product Hazard

To place a product (or class of products) on the list of substantial product hazards pursuant to section 15(j) of the CPSA, the Commission must determine that: (1) The characteristics involved are ''readily observable''; (2) the characteristics are addressed by a voluntary standard; (3) the voluntary standard is effective in reducing the risk of injury associated with the consumer products; and (4) products are in substantial compliance with the voluntary standard. Accordingly, based on the information provided in this preamble, for seasonal and decorative lighting products, the Commission determines that:

- Minimum wire size, sufficient strain relief, and overcurrent protection are all readily observable characteristics of seasonal and decorative lighting products. Measurement of minimum wire size and sufficient strain relief can be visually observed, and the presence of overcurrent protection can be visually observed;
- minimum wire size, sufficient strain relief, and overcurrent protection in seasonal and decorative lighting products are addressed by a voluntary standard, UL 588. Minimum wire size is addressed in section 6 of UL 588. Sufficient strain relief is addressed in sections 15, 71, 79, and SB15 of UL 588. Overcurrent protection is addressed in section 7 of UL 588;
- conformance to UL 588 has been effective in reducing the risk of injury from shock and fire associated with seasonal and decorative lighting products. From 1980 to 1996, the reported average number of deaths per year was 11.9, and the reported average number of nonfatal incidents per year was 44.8. After changes to the UL standard, from 2000 to 2014, the reported average number of deaths dropped to 3.0, and the reported average number of nonfatal incidents per year dropped to 36.3. Although decreasing numbers of death and injury may be a result of several factors, conformance with UL 588 coincided with, and likely contributed to, the decline in deaths and injuries associated with seasonal and decorative lighting products; and
- seasonal and decorative lighting products sold in the United States substantially comply with UL 588. We estimate that more than 90 percent of seasonal and decorative lighting products for sale in the United States comply with the minimum wire size, sufficient strain relief, and overcurrent protection provisions in UL 588.

VI. Effect of the 15(j) Rule

Section 15(j) of the CPSA allows the Commission to issue a rule specifying that a consumer product or class of consumer products has characteristics whose presence or absence creates a substantial product hazard. A rule under section 15(j) of the CPSA is not a consumer product safety rule, and thus, does not create a mandatory standard that triggers testing or certification requirements under section 14(a) of the CPSA.

Although a rule issued under section 15(j) of the CPSA is not a consumer product safety rule, placing a consumer product on the substantial product hazard list in 16 CFR part 1120 has some ramifications. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b). A manufacturer, importer, distributor, or retailer that fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069, and possibly to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

A product that is or contains a substantial product hazard is also subject to corrective action under sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). Thus, a rule issued under section 15(j) for seasonal and decorative lighting allows the Commission to order that a manufacturer, importer, distributor, or retailer of lighting products that do not contain one or more of the three readily observable characteristics to offer to repair or replace the product, or to refund the purchase price to the consumer.

A product that is offered for import into the United States and is or contains a substantial product hazard shall be refused admission into the United States under section 17(a) of the CPSA, 15 U.S.C. 2066(a). Additionally, CBP has the authority to seize certain products offered for import under the Tariff Act of 1930 (19 U.S.C. 1595a) (''Tariff Act''), and to assess civil penalties that CBP, by law, is authorized to impose. Section 1595a(c)(2)(A) of the Tariff Act states that CBP may seize merchandise, and such merchandize may be forfeited if: ''its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute.''

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') requires that proposed and final rules be reviewed for the potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. In the preamble to the proposed rule (79 FR at 62089) the Commission stated that the rule will not have a significant impact on a substantial number of small entities. This statement was based on CPSC staff's review of the roughly 500 companies that import seasonal and decorative lighting products into the United States, finding that a very high percentage, probably in excess of 90 percent of lighting products sold in the United States, already conform to UL 588. Although the Commission received comments stating that a rule would increase costs for manufacturers and consumers, none of the commenters included any data to support their contention. CPSC has not found any data that would alter the analysis provided in the NPR. Accordingly, the Commission finds that the rule will not have a significant impact on a substantial number of small businesses.

VIII. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The final rule to deem seasonal and decorative lighting products that do not contain one or more of three readily observable characteristics to be a substantial product hazard will not have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

IX. Paperwork Reduction Act

The rule does not require any stakeholder to create, maintain, or disclose information. Thus, no paperwork burden is associated with this final rule, and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply.

X. Preemption

A rule under section 15(j) of the CPSA does not establish a consumer product safety rule. Accordingly, the preemption provisions in section 26(a) of the CPSA, 15 U.S.C. 2075(a), do not apply to this rule.

XI. Effective Date

The preamble to the proposed rule stated that a final rule deeming that any seasonal and decorative lighting product that does not conform to sections 6, 7, 15, 71, 79, and SB15 of UL 588 with regard to minimum wire size, sufficient strain relief, and overcurrent protection is a substantial product hazard would take effect 30 days after publication of the rule in the **Federal Register**. We received no comments on the effective date. Accordingly, the final rule will apply to seasonal and decorative lighting products imported or introduced into commerce on June 3, 2015.

List of Subjects in 16 CFR Part 1120

Administrative practice and procedure, Clothing, Consumer protection, Household appliances, Imports, Incorporation by reference, Infants and children, Lighting.

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission amends 16 CFR part 1120 to read as follows:

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

■ 1. The authority citation for part 1120 continues to read as follows:

Authority: 15 U.S.C. 2064(j).

■ 2. In § 1120.2, add paragraph (d) to read as follows:

§ 1120.2 Definitions.

* * * * *

(d) *Seasonal and decorative lighting product* means portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120 volt input voltage rating. Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: Battery-operated products; solar-powered products; products that operate from a transformer or low-voltage power supply; flexible lighting products incorporating non-replaceable series and series/parallel connected lamps enclosed within a flexible polymeric tube or extrusion; and portable electric lamps that are used to illuminate seasonal decorations.

■ 3. In § 1120.3, republish the introductory text, revise paragraphs (a) and (b)(1), and add paragraph (c), to read as follows:

§ 1120.3 Products deemed to be substantial product hazards.

The following products or class of products shall be deemed to be substantial product hazards under section 15(a)(2) of the CPSA:

(a) Hand-supported hair dryers that do not provide integral immersion protection in compliance with the requirements of section 5 of UL 859, or section 6 of UL 1727 (incorporated by reference, *see* § 1120.4).

(b)(1) Children's upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of ASTM F 1816–97 (incorporated by reference, *see* § 1120.4).

* * * * *

(c) Seasonal and decorative lighting products that lack one or more of the following characteristics in conformance with requirements in sections 6, 7, 15, 71, 79, and SB15 of UL 588 (incorporated by reference, see § 1120.4):

(1) Minimum wire size requirements in section 6 of UL 588;

(2) Sufficient strain relief requirements in sections 15, 71, 79, and SB15 of UL 588; or

(3) Overcurrent protection requirements in section 7 of UL 588.

■ 4. Add § 1120.4 to read as follows:

§ 1120.4 Standards incorporated by reference.

(a) The standards required in this part are incorporated by reference (''IBR'') into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect all approved material at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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*.

(b) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www2.astm.org/*.

(1) ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear,* approved June 10, 1997, published August 1998 (''ASTM F 1816–97''), IBR approved for § 1120.3(b).

(2) [Reserved]

(c) Underwriters Laboratories, Inc (''UL''), 333 Pfingsten Road, Northbrook, IL 60062 or through UL's Web site: *www.UL.com*.

(1) UL 588, *Standard for Safety for Seasonal and Holiday Decorative Products,* 18th Edition, approved August 21, 2000 (''UL 588''), IBR approved for § 1120.3(c).

(2) UL 859, *Standard for Safety for Household Electric Personal Grooming Appliances,* 10th Edition, approved August 30, 2002, and revised through June 3, 2010 (''UL 859''), IBR approved for § 1120.3(a).

(3) UL 1727, *Standard for Safety for Commercial Electric Personal Grooming Appliances,* 4th Edition, approved March 25, 1999, and revised through June 25, 2010 (''UL 1727''), IBR approved for § 1120.3(a).

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–10342 Filed 5–1–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2014–N–1903]

Medical Devices; Physical Medicine Devices; Classification of the Powered Lower Extremity Exoskeleton; Republication

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order; republication.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is republishing in its entirety a final order entitled ''Medical Devices; Physical Medicine Devices; Classification of the Powered Lower Extremity Exoskeleton'' that published in the **Federal Register** on February 24, 2015. FDA is republishing to correct an inadvertent omission of information. FDA is classifying the powered lower extremity exoskeleton into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the powered lower extremity exoskeleton's classification. The Agency is classifying the device

into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective May 4, 2015. The classification was applicable on June 26, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Hoffmann, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1434, Silver Spring, MD 20993–0002, 301–796–6476, *Michael.Hoffmann@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On June 22, 2013, Argo Medical Technologies, Inc., submitted a request for classification of the ReWalk under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 26, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 890.3480.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a powered lower extremity exoskeleton will need to comply with the special controls named in this final order. The device is assigned the generic name powered lower extremity exoskeleton, and it is identified as a prescription device that is composed of an external, powered, motorized orthosis that is placed over a person's paralyzed or weakened limbs for medical purposes.

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

TABLE 1—POWERED LOWER EXTREMITY EXOSKELETON RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Instability, falls, and associated injuries	Clinical testing Training Software verification, validation, and hazard analysis Wireless testing Electromagnetic compatibility (EMC) and electromagnetic interference (EMI) testing Electrical safety testing Design characteristics Non-clinical performance testing Water/particle ingress testing Durability testing Battery testing Labeling
Bruising, skin abrasion, pressure sores, soft tissue injury	Clinical testing Training Labeling
Diastolic hypertension and changes in blood pressure, and heart rate	Clinical testing Training

TABLE 1—POWERED LOWER EXTREMITY EXOSKELETON RISKS AND MITIGATION MEASURES—Continued

Identified risk	Mitigation measure
	Labeling
Adverse tissue reaction	Biocompatibility assessment
Premature battery failure	Battery testing Labeling
Interference with other electrical equipment/devices	EMC/EMI testing Labeling
Burns, electrical shock	Electrical safety testing Thermal testing Labeling
Device malfunction resulting in unanticipated operation (*e.g.,* device stoppage, unintended movement).	Clinical testing Non-clinical performance testing Training Software verification, validation, and hazard analysis Electrical safety testing Battery testing Water/particle ingress testing Wireless testing EMC/EMI testing Flammability testing Labeling
Use error	Clinical testing Training Labeling

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness:

- Elements of the device materials that may contact the patient must be demonstrated to be biocompatible.
- Appropriate analysis/testing must validate electronic compatibility/interference (EMC/EMI), electrical safety, thermal safety, mechanical safety, battery performance and safety, and wireless performance, if applicable.
- Appropriate software verification, validation, and hazard analysis must be performed.
- Design characteristics must ensure geometry and materials composition are consistent with intended use.
- Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Performance testing must include:
  - Mechanical bench testing (including durability testing) to demonstrate that the device will withstand forces, conditions, and environments encountered during use;
  - simulated use testing (*i.e.,* cyclic loading testing) to demonstrate performance of device commands and safeguard under worst case conditions and after durability testing;
  - verification and validation of manual override controls are necessary, if present;
  - the accuracy of device features and safeguards; and
  - device functionality in terms of flame retardant materials, liquid/particle ingress prevention, sensor and actuator performance, and motor performance.
- Clinical testing must demonstrate a reasonable assurance of safe and effective use and capture any adverse events observed during clinical use when used under the proposed conditions of use, which must include considerations for:
  - Level of supervision necessary and
  - environment of use (*e.g.,* indoors and/or outdoors), including obstacles and terrain representative of the intended use environment.
- A training program must be included with sufficient educational elements so that upon completion of training program, the clinician, user, and companion can:
  - Identify the safe environments for device use,
  - use all safety features of device, and
  - operate the device in simulated or actual use environments representative of indicated environments and use.
- Labeling for the Physician and User must include the following:
  - Appropriate instructions, warning, cautions, limitations, and information related to the necessary safeguards of the device, including warning against activities and environments that may put the user at greater risk;
  - specific instructions and the clinical training needed for the safe use of the device, which includes:
    - Instructions on assembling the device in all available configurations;
    - instructions on fitting the patient;
    - instructions and explanations of all available programs and how to program the device;
    - instructions and explanation of all controls, input, and outputs;
    - instructions on all available modes or states of the device;
    - instructions on all safety features of the device; and
    - instructions for properly maintaining the device;
  - Information on the patient population for which the device has been demonstrated to have a reasonable assurance of safety and effectiveness;
  - pertinent non-clinical testing information (*e.g.,* EMC, battery longevity); and
  - a detailed summary of the clinical testing including:
    - Adverse events encountered under use conditions,
    - summary of study outcomes and endpoints, and
    - information pertinent to use of the device including the conditions under which the device was studied (*e.g.,* level of supervision or assistance, and environment of use (*e.g.,* indoors and/or outdoors) including obstacles and terrain).

Powered lower extremity exoskeleton devices are restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification

requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the powered lower extremity exoskeleton they intend to market.

II. Environmental Impact

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

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.*

1. K131798: De Novo Request per 513(f)(2) from Argo Medical Technologies, Inc., dated June 22, 2013.

List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for 21 CFR part 890 continues to read as follows:

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

■ 2. Revise § 890.3480 to read as follows:

§ 890.3480 Powered lower extremity exoskeleton.

(a) *Identification.* A powered lower extremity exoskeleton is a prescription device that is composed of an external, powered, motorized orthosis that is placed over a person's paralyzed or weakened limbs for medical purposes.

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

(1) Elements of the device materials that may contact the patient must be demonstrated to be biocompatible.

(2) Appropriate analysis/testing must validate electromagnetic compatibility/interference (EMC/EMI), electrical safety, thermal safety, mechanical safety, battery performance and safety, and wireless performance, if applicable.

(3) Appropriate software verification, validation, and hazard analysis must be performed.

(4) Design characteristics must ensure geometry and materials composition are consistent with intended use.

(5) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Performance testing must include:

(i) Mechanical bench testing (including durability testing) to demonstrate that the device will withstand forces, conditions, and environments encountered during use;

(ii) Simulated use testing (*i.e.,* cyclic loading testing) to demonstrate performance of device commands and safeguard under worst case conditions and after durability testing;

(iii) Verification and validation of manual override controls are necessary, if present;

(iv) The accuracy of device features and safeguards; and

(v) Device functionality in terms of flame retardant materials, liquid/particle ingress prevention, sensor and actuator performance, and motor performance.

(6) Clinical testing must demonstrate a reasonable assurance of safe and effective use and capture any adverse events observed during clinical use when used under the proposed conditions of use, which must include considerations for:

(i) Level of supervision necessary, and

(ii) Environment of use (*e.g.,* indoors and/or outdoors) including obstacles and terrain representative of the intended use environment.

(7) A training program must be included with sufficient educational elements so that upon completion of training program, the clinician, user, and companion can:

(i) Identify the safe environments for device use,

(ii) Use all safety features of device, and

(iii) Operate the device in simulated or actual use environments representative of indicated environments and use.

(8) Labeling for the Physician and User must include the following:

(i) Appropriate instructions, warning, cautions, limitations, and information related to the necessary safeguards of the device, including warning against activities and environments that may put the user at greater risk.

(ii) Specific instructions and the clinical training needed for the safe use of the device, which includes:

(A) Instructions on assembling the device in all available configurations;

(B) Instructions on fitting the patient;

(C) Instructions and explanations of all available programs and how to program the device;

(D) Instructions and explanation of all controls, input, and outputs;

(E) Instructions on all available modes or states of the device;

(F) Instructions on all safety features of the device; and

(G) Instructions for properly maintaining the device.

(iii) Information on the patient population for which the device has been demonstrated to have a reasonable assurance of safety and effectiveness.

(iv) Pertinent non-clinical testing information (*e.g.,* EMC, battery longevity).

(v) A detailed summary of the clinical testing including:

(A) Adverse events encountered under use conditions,

(B) Summary of study outcomes and endpoints, and

(C) Information pertinent to use of the device including the conditions under which the device was studied (*e.g.,* level of supervision or assistance, and environment of use (*e.g.,* indoors and/or outdoors) including obstacles and terrain).

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10332 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9708]

RIN 1545–BK57; RIN 1545–BL30; RIN 1545–BL58

Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable; Requirements of a Section 4959 Excise Tax Return and Time for Filing the Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9708) that were published in the **Federal Register** on December 31, 2014 (79 FR 78954). The final regulations provide guidance regarding the requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010.

DATES: This correction is effective on May 4, 2015 and applicable beginning December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano, Amber L. MacKenzie, or Stephanie N. Robbins at (202) 317–5800 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9708) that are the subject of this correction is under section 501 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9708) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6033–2 is amended by revising paragraph (k)(4) to read as follows:

§ 1.6033–2 Return by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

* * * * *

(k) * * *

(4) The applicability of paragraph (a)(2)(ii)(*l*) of this section shall be limited to returns filed for taxable years ending after December 29, 2014.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015–10340 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, and 602

[TD 9708]

RIN 1545–BK57; RIN 1545–BL30; RIN 1545–BL58

Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable; Requirements of a Section 4959 Excise Tax Return and Time for Filing the Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9708) that were published in the **Federal Register** on December 31, 2014 (79 FR 78954). The final regulations provide guidance regarding the requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010.

DATES: This correction is effective on May 4, 2015 and applicable beginning December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano, Amber L. MacKenzie, or Stephanie N. Robbins at (202) 317–5800 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9708) that are the subject of this correction are under section 501 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9708) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9708), that are the subject of FR Doc. 2014–30525, are corrected as follows:

1. On page 78996, in the preamble, the first column, under the paragraph heading ''Effective/Applicability Dates'', the second line from the bottom of the third full paragraph, the language ''6033 apply to returns filed on or after'' is corrected to read ''6033 apply to returns filed for taxable years ending after''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2015–10341 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 320

[Docket ID: DoD–2014–OS–0068]

Privacy Act; Implementation

AGENCY: National Geospatial-Intelligence Agency (NGA), DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: National Geospatial-Intelligence Agency (NGA) is updating the NGA Privacy Act Program by adding the (k)(2) and (k)(5) exemptions to accurately describe the basis for exempting the records in the system of records notice NGA–010, National Geospatial-Intelligence Agency Security Financial Disclosure Reporting Records System. In this rulemaking, the NGA proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: The rule will be effective on July 13, 2015 unless adverse comments are received by July 6, 2015. If adverse comment is received, the Department of Defense will publish a timely

withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*.

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Kenneth James, Acting Branch Chief, National Geospatial-Intelligence Agency (NGA), Financial Disclosure Program Manager, 7500 GEOINT Drive, Springfield, VA 22150 or by calling 571–557–0110.

SUPPLEMENTARY INFORMATION: This direct final rule makes non-substantive changes to the NGA rules. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and counterintelligence records by the NGA and the Department of Defense.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. This rule does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that this rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that this Privacy Act rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 320

Privacy.

Accordingly, 32 CFR part 320 is amended as follows:

PART 320—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA)

■ 1. The authority citation for 32 CFR part 320 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

■ 2. In § 320.12, add paragraph (f) to read as follows:

§ 320.12 Exemptions.

* * * * *

(f) *System identifier and name:* NGA–010, National Geospatial-Intelligence Agency Security Financial Disclosure Reporting Records System.

(1) Exemptions: Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(2) **Authority:** 5 U.S.C. 552a(k)(2) and (k)(5).

(3) Reasons: Pursuant to 5 U.S.C. 552a(k)(2), and (k)(5) the Director of NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be

determined at the time a request is made, for the following reasons:

(i) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Analyst case notes will be kept separate from the individual's data submission. Those case notes will contain investigative case leads and summaries, sensitive processes, evidence gathered from external sources and potential referrals to law enforcement agencies.

(ii) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(iii) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(iv) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore NGA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: April 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–10061 Filed 5–1–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0293]

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Henry Ford Avenue railroad drawbridge across Cerritos Channel, mile 4.8, at Long Beach, CA. The deviation is necessary to allow the bridge owner to perform an annual bridge inspection. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective without actual notice from May 4, 2015 to 6 p.m. on May 6, 2015. For the purposes of enforcement, actual notice will be used from 7 a.m. on April 27, 2015, until May 4, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0293], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Port of Los Angeles has requested a temporary change to the operation of the Henry Ford Avenue railroad drawbridge, mile 4.8, over Cerritos Channel, at Long Beach, CA. The drawbridge navigation span provides 7 feet vertical clearance above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.147(b), the drawspan is maintained in the fully open position, except when a train is crossing or for maintenance. When the draw is in the closed position, it opens on signal. Navigation on the waterway is mainly commercial traffic, servicing ships entering and leaving the port.

The Port of Los Angeles has requested the drawbridge be allowed to remain closed to navigation from 7 a.m. to 6 p.m. on April 27, April 28, and May 6, 2015, so they can perform the annual bridge inspection, looking for cracks or damage. Mariners will need to contact the bridge tender to inquire as to the status of the drawbridge when transiting through. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies. There is an alternative route, transiting around the south side of Terminal Island, for vessels unable to pass through the bridge in the closed position. The Coast Guard will inform waterway users of this temporary deviation via our Local and Broadcast Notices to Mariners, to minimize resulting navigational impacts.

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

Dated: April 24, 2015.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2015–10377 Filed 5–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0241]

Drawbridge Operation Regulation; Oakland Inner Harbor Tidal Canal, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Alameda County highway drawbridge at Park Street across the Oakland Inner Harbor, mile 5.2, at Alameda, CA. The deviation is necessary to allow the bridge owner to make necessary repairs and rehabilitation of the bridge. This deviation allows single leaf operation of the double leaf, bascule-style drawbridge during the deviation period.

DATES: This deviation is effective from 8:30 p.m. on May 11, 2015 to 5 a.m. on August 14, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0241], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Alameda County has requested a temporary change to the operation of the Alameda County highway bridge at Park Street, mile 5.2, over Oakland Inner Harbor, at Alameda, CA. The drawbridge navigation span provides horizontal clearance of 241 feet between pier fenders. During single leaf operation, horizontal clearance is reduced to approximately 100 feet. The drawbridge provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position and unlimited vertical clearance in the open-to-navigation position. As required by 33 CFR 117.181, the draw opens on signal; except that, from 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. However, the draw shall open during the above closed periods for vessels which must for reasons of safety, move on a tide or slack water, if at least two hours notice is given. Navigation on the waterway is commercial, recreational, emergency and law enforcement vessels.

During the deviation period, the drawspan will be operated with only one leaf between 8:30 p.m. and 5 a.m., Sunday through Thursday, while the opposite leaf will be secured in the closed-to-navigation position for rehabilitation. A two hour advance notice will be required from vessel operators for a double leaf opening. At night and on weekends, the drawbridge will resume the normal double leaf operation, when work is not being performed on the bridge. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

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

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

Dated: April 24, 2015.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2015–10373 Filed 5–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 77

RIN 2900–AP07

Grants for Adaptive Sports Programs for Disabled Veterans and Disabled Members of the Armed Forces

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Veterans Affairs (VA) regulations to establish a new program to provide grants to eligible entities to provide adaptive sports activities to disabled veterans and disabled members of the Armed Forces. This rulemaking is necessary to implement a change in the law that authorizes VA to make grants to entities other than the United States Olympic Committee for adaptive sports programs. It establishes procedures for evaluating grant applications under this grant program, and otherwise administering the grant program. This rule implements section 5 of the VA Expiring Authorities Extension Act of 2013.

DATES: *Effective Date:* This final rule is effective May 4, 2015.

FOR FURTHER INFORMATION CONTACT: Michael F. Welch, Program Specialist, Office of National Veterans Sports Programs and Special Events (002C), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 632–7136. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is required by 38 U.S.C. 521A to ''carry out a program under which the Secretary may make grants to eligible entities for planning, developing, managing, and implementing programs to provide adaptive sports opportunities for disabled veterans and disabled members of the Armed Forces.'' On July 1, 2014, VA published an interim final rule in the **Federal Register**, 79 FR 37211, establishing regulations for conducting the grant program including evaluation of grant applications and otherwise administering the grant program in accordance with the law.

Interested persons were invited to submit written comments on or before September 2, 2014. We received two comments on the interim final rule from two individuals. One commenter praised the adaptive sports programs described in the interim final rule, noting that they ''would be beneficial in so many ways'' for disabled veterans, and stated that taking care of veterans ''should be one of the highest, if not the

highest, priorities of our government.'' We agree that these programs are very beneficial to disabled veterans and appreciate the comment.

Another commenter also stated that adaptive sports programs would be beneficial for disabled veterans and urged the Federal government to ''provide ways for these people to enjoy live [sic] to their fullest.'' The commenter noted that these programs will help them reintegrate into society. We agree with the commenter these programs are beneficial and VA will continue to explore ways to improve the lives of disabled veterans. However, VA does not make any changes based on the submitted comments.

We are making a minor technical correction. The interim final rule text failed to include an authority citation. Therefore, we are adding the authority citation in this final rule.

For the reasons stated above, the interim final rule is adopted with change.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this rulemaking, represents the exclusive legal authority on this subject. No contrary rules or procedures will be authorized. All VA guidance will be read to conform with this rulemaking if possible or, if not possible, such guidance will be superseded by this rulemaking.

Administrative Procedure Act

In the interim final rule, 79 FR 37211, 37216, VA cited section 5 of Public Law 113–59 (December 20, 2013) as the authority to issue the rulemaking without prior notice and opportunity to comment. As previously discussed, VA received two comments. Before issuing this final rule, VA considered both of the comments which supported the rulemaking and did not warrant any change to the rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires VA to consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule contains approved information collections that are within the scope of OMB control numbers 4040–0004 (formerly 0348–0043) for Standard Form 424 and 4040–0008 (formerly 0348–0041) for Standard Form 424C. The final rule also contains provisions that constitute a new information collection. We summarized and sought public comment on these provisions, found in §§ 77.4, 77.8, 77.9, 77.13, 77.16, and 77.19, in the interim final rule published in the **Federal Register** on July 1, 2014. 79 FR 37211. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA submitted the collection to OMB for its review. OMB approved the new information collection and assigned OMB control number 2900–0820.

This final rule updates §§ 77.4, 77.8, 77.9, 77.13, 77.16, and 77.19 by adding this new control number and updates §§ 77.4, 77.6, and 77.9 by removing the references to obsolete OMB control numbers 0348–0041 and 0348–0043 and inserting in their place OMB control numbers 4040–0008 and 4040–0004, respectively.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Due to demographic, economic, infrastructure, and many other factors, a large percentage of small adaptive sports entities do not have sufficient participants, programs and outreach to qualify as an eligible entity under Public Law 113–59. In regions where the disabled veteran population is small relative to participants needed in the entity's applicable adaptive sports areas of expertise, an adaptive sports entity faces constraints in developing a viable grant program. Therefore, the number of small adaptive sports entities involved will be few and their existing programs that meet threshold criteria for eligibility will indicate competence to conduct a viable adaptive sports grant program. There will be no economic impact on any of the eligible entities, as they are not required to provide matching funds to obtain the maximum grant allowance as established under 38 U.S.C. 521A. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for VA Regulations Published from FY 2004 through FYTD.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is

64.034, Grants for Adaptive Sports Programs for Disabled Veterans and Disabled Members of the Armed Forces.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on April 16, 2015, for publication.

List of Subjects in 38 CFR Part 77

Administrative practice and procedure, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: April 29, 2015

Jeffrey M. Martin,

Program Manager, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR chapter I by adding a new part 77 that was published at 79 FR 37211 on July 1, 2014, is adopted as a final rule with the following changes:

PART 77—GRANTS FOR ADAPTIVE SPORTS PROGRAMS FOR DISABLED VETERANS AND DISABLED MEMBERS OF THE ARMED FORCES

■ 1. The authority citation is added to read as follows:

Authority: 38 U.S.C. 501, 521A, unless otherwise noted.

■ 2. In § 77.4, revise the parenthetical at the end of the section to read as follows:

§ 77.4 Applications.

* * * * *

(OMB has approved the information collection requirements in this section under control numbers 2900–0820, 4040–0004 for Standard Form 424, and 4040–0008 for Standard Form 424C.)

■ 3. In § 77.6, revise the parenthetical at the end of the section to read as follows:

§ 77.6 Amendments to grant applications.

* * * * *

(OMB has approved the information collection requirements in this section under control number 4040–0004 for Standard Form 424 and 4040–0008 for Standard Form 424C.)

■ 4. In § 77.8, revise the parenthetical at the end of the section to read as follows:

§ 77.8 Additional requirements and procedures for applications.

* * * * *

(OMB has approved the information collection requirements in this section under control number 2900–0820.)

■ 5. In § 77.9, revise the parenthetical at the end of the section to read as follows:

§ 77.9 Use of pre-applications.

* * * * *

(OMB has approved the information collection requirements in this section under control numbers 2900–0820, 4040–0004 for Standard Form 424, and 4040–0008 for Standard Form 424C.)

■ 6. In § 77.13, revise the parenthetical at the end of the section to read as follows:

§ 77.13 Applications for noncompetitive adaptive sports grants.

* * * * *

(OMB has approved the information collection requirements in this section under control number 2900–0820.)

■ 7. In § 77.16, revise the parenthetical at the end of the section to read as follows:

§ 77.16 Grantee reporting requirements.

* * * * *

(OMB has approved the information collection requirements in this section under control number 2900–0820.)

■ 8. In § 77.19, revise the parenthetical at the end of the section to read as follows:

§ 77.19 Financial management.

* * * * *

(OMB has approved the information collection requirements in this section under control number 2900–0820.)

[FR Doc. 2015–10358 Filed 5–1–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[EPA–HQ–OW–2010–0884; FRL–9926–32–OW]

Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On March 6, 2014, EPA published a final rule in the **Federal Register** revising effluent limitations guidelines and standards for the construction and development point source category. This correcting amendment corrects errors in the amendatory language of the March 6, 2014 final rule.

DATES: The indefinite stay at 40 CFR 450.22(a) and (b) is lifted and this rule is effective on May 4, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse W. Pritts, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–1038; fax number: 202–566–1053; email address: *pritts.jesse@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a final rule on March 6, 2014 (79 FR 12661) to amend 40 CFR part 450. The amendatory instructions EPA provided in this final rule for the changes at 40 CFR 450.22(a) and (b) were incorrect. Since the provisions at § 450.22(a) and (b) had been previously indefinitely stayed by EPA, the amendatory instructions should have included a lift of the stay so that the CFR could reflect that those provisions had been amended. EPA did not include language lifting the stay in the March 6, 2014 amendatory instructions. This action provides corrected amendatory instructions so that the amendments promulgated on March 6, 2014 can be incorporated into the CFR.

EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA), which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because this action only incorporates previously promulgated regulatory changes into the CFR. EPA inadvertently provided incorrect instructions to incorporate those changes into the CFR. EPA can identify no reason why the public would be interested in having the opportunity to comment on the correction prior to this action being finalized since this action does not alter any regulatory requirements.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C.

553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not alter any regulatory requirements, and thus there are no affected parties as explained above. Rather, this action merely corrects inadvertent errors in the amendatory language for the CFR. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action corrects an inadvertent error in the amendatory instructions of EPA's March 6, 2014, final rule regarding the construction and development point source category and imposes no information collection burden on the industry because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action corrects an inadvertent error in the amendatory instructions of EPA's March 6, 2014, final rule regarding the construction and development point source category and imposes no additional requirements on the industry.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action is not subject to Executive Order 12898 because it does not concern or affect human health or environmental risk.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule, as discussed in the **SUPPLEMENTARY INFORMATION** section of this preamble, which includes the basis for that finding.

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Water pollution control.

Dated: April 24, 2015.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

In rule FR Doc. 2014–04612 published on March 6, 2014, (79 FR 12661), make the following correction:

On page 12667, in the second column, revise amendatory instruction number 4. to read as follows:

§ 450.22 [Corrected]

■ 4. Amend § 450.22 by:
■ a. Lifting the indefinite stay on paragraphs (a) and (b); and
■ b. Removing and reserving paragraphs (a) and (b).

[FR Doc. 2015–10362 Filed 5–1–15; 08:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 80, No. 85
Monday, May 4, 2015

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50, Appendix I

[NRC–2014–0044]

RIN 3150–AJ38

Reactor Effluents

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this advance notice of proposed rulemaking (ANPR) to obtain input from stakeholders on the development of a regulatory basis for the NRC's regulations governing radioactive effluents from nuclear power plants. The regulatory basis would support potential changes to better align the NRC regulations governing dose assessments for radioactive effluents from nuclear power plant operations with the most recent terminology and dose-related methodology published by the International Commission on Radiological Protection (ICRP) contained in the ICRP Publication 103 (2007). The NRC has identified specific questions and issues with respect to a possible revision of the NRC's current regulations and guidance governing radioactive gaseous and liquid effluents from nuclear power plants. The NRC seeks public and other stakeholder input on these questions and issues in order to develop the regulatory basis.

DATES: Submit comments by September 1, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carolyn Lauron, telephone: 301–415–2736, email: *Carolyn.Lauron@nrc.gov;* or Nishka Devaser, telephone: 301–415–5196, email: *Nishka.Devaser@nrc.gov.* Both of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0044 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0044.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is referenced in the **SUPPLEMENTARY INFORMATION** section of this document. For the convenience of the reader, the ADAMS accession numbers are also provided in a table in the ''Availability of Documents'' section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0044 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The requirements of appendix I of part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) were first published in 1975 (40 FR 19439; May 5, 1975) and are based on the terminology and methodology for dose assessment described in ICRP Publication 2 (1959).[1]

[1] ICRP Publication 2 (1959), ''Permissible Dose for Internal Radiation.'' The condensed ICRP reference

Continued

The requirements of 10 CFR part 50, appendix I, apply to persons who hold NRC licenses to operate nuclear power reactors under 10 CFR part 50 or 10 CFR part 52. Specifically, 10 CFR part 50, appendix I, prescribes the design and performance of equipment used to control radioactive liquid and gaseous effluents to the environment and doses to members of the public from nuclear power plants during normal operations and expected operational occurrences. The 10 CFR part 50, appendix I, regulations provide guidance to licensees for developing technical specifications, as required by 10 CFR 50.36a(a), to keep levels of radioactive materials in effluents released in unrestricted areas ''As Low As Is Reasonably Achievable'' (ALARA).[2]

The ALARA requirements for equipment designed to control releases of radioactive materials are contained in various provisions in 10 CFR parts 50 and 52, and the design objectives are contained in 10 CFR part 50, appendix I.[3] The dose criteria are based on ICRP Publication 2 dosimetry (*i.e.,* total body and critical organ dose concepts and models). Since its implementation in 1975, the 10 CFR part 50, appendix I, regulations were revised several times, but none of the amendments involved an alignment of the dosimetry basis with that of the NRC's general radiation protection regulations in 10 CFR part 20.

In 1991, the NRC substantively amended its 10 CFR part 20 regulations (56 FR 23360; May 21, 1991). The purpose of the 1991 amendments was to adopt the basic tenets of the ICRP system of radiation dose limitation described in ICRP Publication 26 (1977), ''Recommendations of the ICRP.'' The 1991 amendments to 10 CFR part 20 were also based upon ICRP Publication 30 (1979–1988), ''Limits for Intakes of Radionuclides by Workers,'' including its four parts, four supplements and index, which were published during the period of 1979 through 1988. The concern with the current 10 CFR part 50, appendix I, regulations, guidance, and software that supports the guidance is that they are based on dosimetry concepts issued in 1959 under the recommendations of ICRP Publication 2, and as such, no longer align with those used in 10 CFR part 20. In total, the ICRP has updated its terminology and methodology for dose assessments three times since 1959. The most recent terminology and methodology for dose assessments are described in ICRP Publication 103, which was published in 2007.[4]

In response to the ICRP Publication 103 recommendations, the NRC staff prepared two papers for the Commission's review, SECY–08–0197, ''Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the International Commission on Radiological Protection,'' dated December 18, 2008 (ADAMS Accession No. ML091310193), and SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance,'' dated April 25, 2012 (ADAMS Accession No. ML121020108). Both papers considered potential revisions to the NRC's regulations in 10 CFR part 20 and 10 CFR part 50, appendix I. The papers are publicly available and described in further detail below.[5]

The SECY–08–0197 paper described and evaluated the ICRP Publication 103 recommendations along with an NRC staff recommendation that the Commission approve a closer alignment of the NRC regulatory framework with the recommendations of ICRP Publication 103. The NRC staff identified a number of recommendations to achieve this alignment, including (1) the development of a technical basis, or the rationale, for revising radiation protection regulations and (2) outreach with stakeholders and interested parties to identify issues, options, and potential impacts. The NRC staff stated that it would provide the Commission with the results of the stakeholder and interested party interactions, the scope of any proposed rulemaking, regulatory analysis of costs and benefits, evaluation of necessary policy and implementation issues, the resources, and the projected rulemaking completion date, which would be dependent on the ICRP's development of essential technical information. At present, the ICRP is still developing this technical information and it is currently scheduled for publication in 2015.

The Commission made findings and provided direction to the NRC staff in staff requirements memorandum (SRM), SRM–SECY–08–0197, ''Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the International Commission on Radiological Protection,'' dated April 2, 2009 (ADAMS Accession No. ML090920103). In SRM–SECY–08–0197, the Commission approved the NRC staff's recommendation to ''begin engagement with stakeholders and interested parties to initiate development of the technical basis for a possible revision of the NRC's radiation protection regulations, as appropriate and where scientifically justified, to achieve greater alignment with the 2007 recommendations . . . contained in ICRP Publication 103.'' The Commission agreed with the NRC staff and the NRC's Advisory Committee on Reactor Safeguards (ACRS) ''that the current regulatory framework continues to provide adequate protection of the health and safety of workers, the public, and the environment.'' The Commission further stated, ''[f]rom a safety regulation perspective, ICRP Publication 103 proposes measures that go beyond what is needed to provide for adequate protection,'' and that ''[t]his point should be emphasized when engaging stakeholders and interested parties, and thereby focus the discussion on discerning the benefits and burdens associated with revising the radiation protection regulatory framework,'' which includes 10 CFR part 50, appendix I.

In response to the Commission's direction in SRM–SECY–08–0197, the NRC staff engaged in extensive stakeholder outreach activities on the broad issues arising from a possible revision of the NRC's radiation protection framework. Three **Federal Register** notices (FRNs) were issued requesting public feedback and comments (74 FR 32198, July 7, 2009; 75 FR 59160, September 27, 2010; and 76 FR 53847, August 30, 2011). Presentations were made and discussions were held at a variety of professional societies, licensee organizations, public interest groups, and State organizations (*e.g.,* Conference

formats used in this document are ''ICRP Publication 103,'' and ''ICRP Publication 103 (2007).''

[2] The NRC's regulations (10 CFR 20.1003) define ALARA as ''making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part [10 CFR part 20] as is practical consistent with the purpose for which the licensed activity is undertaken . . . .''

[3] The NRC's regulations in 10 CFR 50.34a establish design objectives for equipment to control releases of radioactive material in effluents. These releases are reported to the NRC in accordance with requirements set forth in 10 CFR 50.36a. In addition, 10 CFR 52.47, 52.79, 52.137, and 52.157 provide that applications for design certification, combined license, design approval, or manufacturing license, respectively, shall include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems.

[4] ICRP, 2007. The 2007 Recommendations of the International Commission on Radiological Protection, ICRP Publication 103. Ann. ICRP 37 (2–4).

[5] The NRC staff has published an Advance Notice of Proposed Rulemaking (ANPR) for its radiation protection regulations in 10 CFR part 20 (79 FR 43284; July 25, 2014). The 10 CFR part 20 ANPR described many potential revisions to the 10 CFR part 20 regulations, including a closer alignment with the ICRP Publication 103 dosimetry and terminology recommendations.

of Radiation Control Program Directors, and Agreement States). In the fall of 2010, the NRC staff conducted a series of facilitated roundtable workshops in Washington, DC, Los Angeles, CA, and Houston, TX. Each workshop included representatives from a broad range of users of radioactive material. This process provided an opportunity for various groups of stakeholders to have a more focused discussion. The October 2010 workshop in Washington, DC, focused on the nuclear power and fuel cycle industries, and the radiation protection programs of other Federal agencies, (*e.g.,* U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), U.S. Navy, Armed Forces Radiobiology Research Institute, and National Institutes of Health). Some of the participants at the Washington, DC, workshop indicated a general support for an integrated alignment of 10 CFR part 20 and 10 CFR part 50, appendix I, regulations with the recommendations of ICRP Publication 103. Participants also urged a coordinated revision of the NRC's regulations with the requirements of EPA's 40 CFR part 190 because the NRC requires licensees to follow this EPA requirement through the NRC's regulation in 10 CFR 20.1301(e). Finally, some participants noted a concern as to the justification for any revision of 10 CFR part 50, appendix I, as it is not a safety standard and speculated that such a revision would be costly to the industry. Transcripts of each workshop and all written comments received in response to the FRNs are publicly available through the NRC's public Web site on the page entitled, ''Options to Revise Radiation Protection Regulations and Guidance,'' *http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/opt-revise.html.*

In addition to the national outreach described above, the NRC's staff participated in international outreach activities in response to the Commission's direction in SRM–SECY–08–0197. The NRC staff's activities during this time included participation in the revision of the International Basic Safety Standards by the International Atomic Energy Agency (IAEA), from 2009 through its completion in the second quarter of 2013, and observation of the revision of the Euratom Basic Safety Standards Directive in the European Union. The IAEA's and Euratom's revisions focused on aligning their requirements with the recommendations of ICRP Publication 103.

In SECY–12–0064, the NRC staff recommended amending the NRC's regulatory framework, including 10 CFR part 50, appendix I, to better align with those ICRP Publication 103 recommendations concerning terminology and dose calculation methodologies for estimating radiation exposure and risk. The NRC staff cautioned, however, that the NRC should not initiate a rulemaking to better align with these ICRP Publication 103 recommendations until the ICRP publishes its updated dose coefficients and other supporting information, thereby allowing the NRC to engage in a single rulemaking effort. The NRC staff also recommended that it continue to engage in stakeholder outreach.

In SRM–SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance,'' dated December 17, 2012 (ADAMS Accession No. ML12352A133), the Commission directed the NRC staff to develop a regulatory basis for proposed revisions to 10 CFR part 20 and to 10 CFR part 50, appendix I, in parallel, for the purpose of aligning each with the most recent methodology and terminology for dose assessment (namely, the ICRP Publication 103 recommendations). With respect to potential changes to the 10 CFR part 20 regulations, the NRC issued an ANPR on July 25, 2014 (79 FR 43284).[6] The potential changes to the 10 CFR part 50, appendix I, regulations under consideration also involve a closer alignment of these regulations with the recommendations in ICRP Publication 103 concerning terminology and dose calculation methodologies for estimating radiation exposure and risk due to effluent releases. The NRC staff will coordinate the development of both regulatory bases together, including consideration of public comments (some of which have already been received) that raise matters common to both sets of regulations. If rulemaking is eventually promulgated, this approach would help ensure that the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I, regulations would be based on a common dosimetry basis, terminology, and dose calculation methodology. A closer alignment of 10 CFR part 50, appendix I, with ICRP Publication 103 would also modernize the NRC's design objectives, regulatory guidance, and supporting computer software.

The EPA is also examining possible revisions to the ''Environmental Radiation Protection Standards for Nuclear Power Operations,'' 40 CFR part 190, which applies to the entire nuclear fuel cycle.[7]

Section II of 10 CFR part 50, appendix I, assigns design objectives for doses due to liquid and gaseous effluents. Under Section II.A of appendix I, the annual design objectives for liquid effluents from all pathways of exposure are 0.03 milliSievert (mSv) (3 millirem (mrem)) to the total body and 0.1 mSv (10 mrem) to any organ. Under Section II.B, the annual design objectives for noble gases in gaseous effluents are 0.1 milliGray (mGy) (10 millirad (mrad)) gamma-air dose and 0.2 mGy (20 mrad) beta-air dose, with provisions for increasing or decreasing the design objectives based on total body dose and skin dose. Under Section II.C of appendix I, the annual design objective for radioactive iodines and particulates in gaseous effluents is 0.15 mSv (15 mrem) to any organ.

These design objectives are referenced to the total body and various organs of the human body in accordance with the 1959 recommendations of ICRP Publication 2. ICRP Publication 103 has a larger list of organs and suggests effective dose may be a good indicator of health risk for very low exposures, like those normally encountered with radioactive effluents from nuclear power plants. The design objectives apply to each reactor unit and to radioactive releases to unrestricted areas.

Section II.D of 10 CFR part 50, appendix I, concerns the use of cost-benefit ratios, to ensure facilities use radwaste treatment technology that can reduce the dose to the population within 50 miles of the reactor. The cost-benefit criteria are $1,000 per total body man-rem and $1,000 per man-thyroid-rem. The design objectives and cost benefit criteria may need to be revised to better align 10 CFR part 50, appendix I, with the recommendations of ICRP Publication 103. For example, the dose calculation methodologies in 10 CFR part 50, appendix I (based on ICRP Publication 2), result in a total body dose, while the dose calculation methodologies in ICRP Publication 103 result in an effective dose. Although both calculation methodologies result in an estimate of the dose to an individual, different assumptions are used in each

[6] The 10 CFR part 20 ANPR is available on *http://www.regulations.gov* under Docket ID NRC–2009–0279. On November 20, 2014 (79 FR 69065), the NRC extended the 10 CFR part 20 ANPR comment period to March 24, 2015. On March 18, 2015 (80 FR 14033), the NRC extended the 10 CFR part 20 ANPR comment period a second time, to June 22, 2015.

[7] The 40 CFR part 190 ANPR was published by EPA on February 4, 2014 (79 FR 6509), and is available on *www.regulations.gov* under Docket ID EPA–HQ–OAR–2013–0689.

calculation. As a result, the estimated doses to the individual will be different, but the differences are not expected to be significant with respect to radiological protection for members of the public. A more exact estimate of the differences in dose estimates between the two calculation methodologies will be available once all of the dose coefficients for ICRP Publication 103 are published, which is currently scheduled for 2015. A summary of the differences in the dose estimates between ICRP Publication 2 and ICRP Publication 103 methodologies is expected to be included in the regulatory basis document.

Some of the design objectives in 10 CFR part 50, appendix I, are stated in terms of organ dose. The ICRP Publication 103 indicates that the primary use of effective dose is for demonstrating compliance with dose limits. As a result, the NRC is interested in public comments on whether the concept of the organ dose, used in 10 CFR part 50, appendix I, design objectives, should be replaced with effective dose. The ICRP Publication 103 indicates the effective dose is particularly suited to cases where the estimated doses are much less than the annual limit for a member of the public (*i.e.,* 0.1 mSv or 100 mrem per 10 CFR 20.1301). Additionally, if the organ dose design objectives were to be eliminated, the NRC is interested in public comments on what new values may be assigned to the effective dose values that would replace the organ doses.

In addition, 10 CFR part 50, appendix I, includes additional design objectives in Docket RM–50–2, ''Concluding Statement of Position of the Regulatory Staff, Guides on Design Objectives for Light-Water-Cooled Nuclear Power Reactors'' (February 20, 1974, pp. 25–30).[8] For liquid or gaseous effluents, considering all release pathways, the design objective for the site is an annual dose to the total body or to any organ of an individual in an unrestricted area not to exceed 0.05 mSv (5 mrem). For gaseous effluents, as radioactive iodines and particulates in consideration of all release pathways, the design objective for the site is an annual dose to any organ of an individual in an unrestricted area not to exceed 0.15 mSv (15 mrem). The design objective for radioactivity in liquid effluents, excluding tritium and dissolved gases, is a calculated annual quantity not to exceed 5 Curies (Ci) (185 gigaBequerel (GBq)) per reactor unit. Additionally, the design objective for I–131 in gaseous effluents is a calculated annual quantity not to exceed 1 Ci (37 GBq) per reactor unit. The annual design objective for radioactive material above background in gaseous effluents is a calculated quantity not to exceed 0.1 mGy (10 mrad) gamma-air dose and 0.2 mGy (20 mrad) beta-air dose, with provisions for increasing or decreasing the design objectives based on total body dose and skin dose. The Docket RM–50–2 objectives and dose limits are applicable to reactor construction permit applications that were docketed on or after January 2, 1971, and prior to June 4, 1976. As a result, compliance with the Docket RM–50–2 criteria would relieve such applicants from the other cost-benefit provisions of Section II.D of 10 CFR part 50, appendix I.

The dose calculation methodology used to demonstrate compliance with the 10 CFR part 50, appendix I, design objectives is different than the dose methodology used for compliance with 10 CFR part 20. There are multiple methods of calculating dose. In 10 CFR part 20, dose is expressed as total effective dose equivalent (TEDE), which incorporates a risk-based dose, weighted by tissues or organs, as outlined in ICRP Publication 26. Under this TEDE approach, the dose to the body is expressed in a single value. By contrast, 10 CFR part 50, appendix I, uses the recommendations of ICRP Publication 2 to express separate doses for the total body and critical organs. Other differences between 10 CFR part 20 dose constructs and 10 CFR part 50, appendix I, dose constructs exist, such as the use of non-stochastic effects in limiting doses to specific organs in 10 CFR part 20. The ICRP Publication 2 approach used in 10 CFR part 50, appendix I, does not make such distinctions among organs.

The differences between the various dose calculation methodologies used in the NRC's current regulatory framework (*i.e.,* 10 CFR part 20 and 10 CFR part 50, appendix I) and those recommended by the ICRP after ICRP Publication 30,[9] have created challenges for the NRC and its licensees. The NRC staff described these challenges in its paper to the Commission, SECY–01–0148, ''Processes for Revision of 10 CFR part 20 Regarding Adoption of ICRP Recommendations on Occupational Dose Limits and Dosimetric Models and Parameters,'' dated August 2, 2001 (ADAMS Accession No. ML011580363). Specifically, the challenges included licensees' requests to use dosimetry methods based upon the recommendations in the various ICRP publications issued after ICRP Publication 30 for both external (to the body) and internal (within the body) dose assessments; areas of non-alignment between the NRC and international regulatory bodies, including the differences in occupational exposure limits; and the use by some Federal agencies (*e.g.,* DOE and EPA), of dosimetry models based upon ICRP recommendations that were either not incorporated in the NRC's 1991 10 CFR part 20 rulemaking or were published after that rulemaking. The reader is encouraged to review the parallel ANPR on the potential revisions to 10 CFR part 20 for more details related to SECY–01–0148.[10]

The 10 CFR part 50, appendix I, design objectives for plant systems are more restrictive than either the 1 mSv (100 mrem) per year dose limit for members of the public in 10 CFR 20.1301(a), or the effluent concentration limits (ECLs) in 10 CFR part 20, appendix B, Table 2, ''Effluent Concentrations,'' which correspond to 0.5 mSv (50 mrem) per year.[11] As stated in 10 CFR 50.34a(a), the design objectives of 10 CFR part 50, appendix I, are not radiation protection standards, but are design criteria to ensure equipment designs maintain radioactive effluents ALARA. The NRC's regulation in 10 CFR 50.36a(b), which is referenced in Section IV of 10 CFR part 50, appendix I, invokes compatibility in balancing the need for operational flexibility while still ensuring public health and safety. Releases of

[8] The ''Concluding Statement of Position of the Regulatory Staff'' in Docket RM–50–2 is attached as an annex to 10 CFR part 50, appendix I.

[9] These ICRP recommendations include those published in: ICRP Publication 60 (1991), ''1990 Recommendations of the International Commission on Radiological Protection;'' ICRP Publication 61 (1991), ''Annual Limits on Intake of Radionuclides by Workers Based on the 1990 Recommendations;'' ICRP Publication 66 (1994), ''Human Respiratory Tract Model for Radiological Protection;'' ICRP Publication 67 (1993), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 2 Ingestion Dose Coefficients;'' ICRP Publication 68 (1994), ''Dose Coefficients for Intakes of Radionuclides by Workers;'' ICRP Publication 69 (1995), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 3 Ingestion Dose Coefficients;'' ICRP Publication 71 (1995), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 4 Inhalation Dose Coefficients;'' ICRP Publication 72 (1995), ''Age-dependent Doses to the Members of the Public from Intake of Radionuclides—Part 5 Compilation of Ingestion and Inhalation Coefficients;'' and ICRP Publication 74 (1996), ''Conversion Coefficients for use in Radiological Protection against External Radiation.''

[10] See 79 FR 43287.

[11] In accordance with 10 CFR 20.1302(b)(2)(i), each NRC licensee may demonstrate compliance with the public dose limit set forth in 10 CFR 20.1301(a) by showing that the ''annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in table 2 of appendix B to part 20.''

radioactive effluents from nuclear power plants are controlled by plant specific technical specifications to ensure that such releases are maintained: (1) ALARA using 10 CFR part 50, appendix I, design objectives and requirements; (2) a small fraction of the 10 CFR 20.1301 public dose limit; and (3) within the EPA's 40 CFR part 190 environmental dose standards for facilities that are part of the uranium fuel cycle,[12] as required by 10 CFR 20.1301(e).[13] As a result, the 10 CFR 20.1301 public dose limit of 1 mSv (100 mrem) per year on radioactive effluents is rarely controlling in limiting radioactive releases from nuclear power plants as effluents typically are only a fraction of such dose limit or of the 10 CFR part 20, appendix B, Table 2 concentration limits.

Inasmuch as the regulatory purpose of 10 CFR part 20 is not the same as 10 CFR part 50, appendix I, the difference in dosimetry concepts between 10 CFR part 20 (based on ICRP Publication 26) and 10 CFR part 50, appendix I (based on ICRP Publication 2), does not preclude the NRC from having an effective regulatory framework. However, there are practical considerations, as discussed in SECY–08–0197, Enclosure 3, ''Details of Technical Options for Revision of 10 CFR part 50 and Appendix I Regulations and Regulatory Guidance for Light Water-Cooled Nuclear Power Reactors,'' that the NRC should evaluate when determining whether to transition to a common dosimetry concept for both 10 CFR part 20 and 10 CFR part 50, appendix I, regulations, guidance, and supporting computer software. Enclosure 4, ''Listing of NRC Guidance Potentially Subject for Update,'' of SECY–08–0197 lists NRC documents and computer codes that would need to be reviewed and updated.

In implementing the ALARA requirements of 10 CFR part 50, appendix I, the NRC published a series of regulatory guides to provide guidance on how to demonstrate compliance with 10 CFR part 50, appendix I. The regulatory guides address methods for estimating the activity released in gaseous and liquid effluents, dispersion of effluents in the atmosphere and water bodies, and calculating potential radiation doses to offsite members of the public (see Section VIII of this ANPR for the full title and availability of documents cited within this ANPR). The key guidance document is Regulatory Guide (RG) 1.109, ''Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR part 50, Appendix I, Rev. 1,'' which describes mathematical models and assumptions for estimating radiation doses to members of the public from radioactive effluents. Two separate guidance documents, NUREG/CR–4013, ''LADTAP II–Technical Reference and Users Guide,'' and NUREG/CR–4653, ''GASPAR II–Technical Reference and Users Guide,'' describe computer models that implement the guidance of RG 1.109 and therefore are acceptable methods in demonstrating compliance with the 10 CFR part 50, appendix I, requirements.

Regulatory Guide 1.109 contains tables of dose factors. As described in SECY–08–0197, a revised set of dose factors are a crucial step to any revision of the NRC's radiation protection framework for radioactive effluents. These dose factors provide a basis for calculating doses and determining design objectives in 10 CFR part 50, appendix I. These dose factors would also provide the basis for revising the limits for radioactive effluents in 10 CFR part 20, appendix B, Table 2, ECLs for a representative member of the public. These ECLs are calculated in one of two ways and contain factors to account for the exposure time, the breathing rate, the dose limit for members of the public, and the various age groups exposed. These dose conversion factors also provide a basis for the 10 CFR part 20, appendix B, Table 3, ''Releases to Sewers,'' limits, which are calculated on a similar basis as 10 CFR part 20 appendix B, Table 2, but with different assumptions. The tables of dose factors in RG 1.109 should be revised as part of any effort to more closely align the NRC's regulations with ICRP Publication 103 recommendations.

Besides the computer codes, RG 1.109 is supported by a series of related documents, including RG 1.110, ''Cost-Benefit Analysis for Radwaste Systems for Light-Water-Cooled Nuclear Power Reactors;'' which provides methods to conduct cost-benefit analyses in evaluating the performance of radwaste systems used in light water reactors; RG 1.111, ''Methods for Estimating Atmospheric Transport and Dispersion of Gaseous Effluents in Routine Releases from Light-Water-Cooled Reactors;'' which describes mathematical models and assumptions for estimating atmospheric transport, dispersion, and deposition of airborne effluents during routine operation; RG 1.112, ''Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Light-Water-Cooled Power Reactors,'' which describes methods for calculating radioactive source terms for evaluating radioactive waste treatment systems; RG 1.113, ''Estimating Aquatic Dispersion of Effluents from Accidental and Routine Reactor Releases for the Purpose of Implementing Appendix I, Rev. 1,'' which provides mathematical models and methods in estimating aquatic dispersion of both routine and accidental releases; and RG 1.21, ''Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power, Rev. 2,'' which provides guidance on how to measure, evaluate, and report to the NRC, plant-related radioactivity (excluding background radiation) in effluents. These documents should be revised as part of any effort to more closely align the NRC's regulations with ICRP Publication 103 recommendations.

The NRC has issued several NUREGS that support RG 1.109 and 10 CFR part 50, appendix I. For example, NUREG–1301, ''Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors,'' NUREG–1302, ''Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Boiling Water Reactors,'' NUREG–0543, ''Methods for Demonstrating LWR Compliance With the EPA Uranium Fuel Cycle Standard (40 CFR part 190),'' and NUREG–0133, ''Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants: A Guidance Manual for Users of Standard Technical Specifications,''

[12] The EPA's regulation in 40 CFR 190.2 defines the uranium fuel cycle as ''the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy, but excludes mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.''

[13] The NRC's regulation in 10 CFR 20.1301(e) states that a NRC licensee ''subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR part 190 shall comply with those standards.'' The primary 40 CFR part 190 requirement of concern to NRC nuclear reactor licensees is 40 CFR 190.10(a), which states that operations must be conducted in such a manner as to provide reasonable assurance that ''[t]he annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public, as the result of exposures to planned discharges of radioactive materials, radon and its daughters excepted, to the general environment from uranium fuel cycle operations and to radiation from these operations.'' It should be noted that the dose limits of this EPA standard are also based on ICRP Publication 2 dosimetry concepts and dose calculation methods.

present guidance on the format and contents of operational programs. The programs include the Offsite Dose Calculation Manual, the radioactive effluent control program (previously known as Radiological Effluent Technical Specifications or RETS), and the Radiological Environmental Monitoring Program (or REMP).

There are other regulatory guides, although not issued for the purpose of supporting RG 1.109, that are nonetheless linked to implementation of 10 CFR part 50, appendix I. For example, RG 4.15, ''Quality Assurance for Radiological Monitoring Programs (Inception through Normal Operations to License Termination)—Effluent Streams and the Environment, Rev. 2,'' addresses quality assurance for maintaining radiological effluent monitoring programs at or around reactor sites. Enclosure 4 of SECY–08–0197 presents an initial listing of NRC guidance (documents and computer codes) that would be reviewed and updated, as needed, in supporting the implementation of any potential revision to 10 CFR part 50, appendix I.

Even though the NRC's regulations on radioactive effluents are protective of the health and safety of the public, over the past decade there have been discussions with stakeholders about updating the basis of 10 CFR part 50, appendix I, design objectives, the regulatory guidance documents, and the supporting computer software to be consistent with the dose methodology used in 10 CFR part 20. Some of the considerations identified by NRC staff are:

(1) Updating 10 CFR part 50, appendix I, requirements and associated dose calculation methodology, which is based upon the recommendations of ICRP Publication 2 (1959), to reflect current scientific knowledge underlying radiation protection principles, such as those described in ICRP Publication 103 (2007);

(2) Engaging in parallel revisions of 10 CFR part 20 and 10 CFR part 50, appendix I, for better alignment with ICRP Publication 103 terminology and methodology for dose assessments; as well as to ensure that any rulemaking amending 10 CFR part 20 and 10 CFR part 50, appendix I, have a common effective or compliance date;

(3) Updating the radiation protection principles because ICRP Publication 2 recommendations are no longer taught in current health physics university curricula and as a result, the NRC staff and industry need to instruct new employees about the implementation of ICRP Publication 2 in reviewing and preparing reactor license applications that rely upon NRC guidance and dose computer codes (*e.g.,* the computer codes LADTAP and GASPAR which calculate doses for liquid effluents and gaseous effluents, respectively) based upon ICRP Publication 2; and

(4) Whether amending 10 CFR part 50, appendix I, to more closely align with the ICRP Publication 103 recommendations substantially increases the overall protection of the public health and safety, and is cost-justified under a backfit or issue finality analysis, such that a revised 10 CFR part 50, appendix I, should be applied to existing 10 CFR part 50 licensees and to those persons who hold NRC licenses under 10 CFR part 52 (*e.g.,* combined license holders and applicants, a holder of a standard design certification).

Given these concerns, the NRC staff is considering more closely aligning the dose concepts of 10 CFR part 20 and the 10 CFR part 50, appendix I, to the ICRP Publication 103 recommendations.

III. Regulatory Objectives

The NRC staff has identified the following objectives in any potential rulemaking to revise 10 CFR part 50, appendix I:

1. Engage stakeholders in a discussion on ways to improve 10 CFR part 50, appendix I, with particular emphasis on improving the terminology and methodology for dose assessments.

2. Collect stakeholder comments, consider stakeholder input, and evaluate various options to achieve a better alignment between 10 CFR part 50, appendix I, and the most recent terminology and methodology for dose assessments in ICRP Publication 103.

3. Establish a technical basis for exceptions to the recommendations of ICRP Publication 103, to the extent these recommendations are considered by the NRC in a future proposed rulemaking.

4. Prepare and submit a regulatory basis document to the Commission in accordance with the Commission's direction in SRM–SECY–12–0064.

IV. Policy and Technical Issues

Achieving a closer alignment between 10 CFR part 50, appendix I, and the ICRP Publication 103 recommendations would involve changing the underlying terminology and methodology for dose assessment in 10 CFR part 50, appendix I. This closer alignment, if adopted by the NRC, would pose several challenges for the NRC, including the need to revise guidance documents and implementing procedures, and updating computer codes. Likewise, a closer alignment would require licensees to re-train workers to use a new dose assessment system, revise implementing procedures and programs, and revise record keeping and data reporting practices. Therefore, the NRC is seeking to understand the impacts of more closely aligning 10 CFR part 50, appendix I, and associated guidance with the ICRP Publication 103 recommendations regarding terminology and methodology for dose assessments. The issues and options below are intended to elicit input from the public, the regulated community, and other stakeholders. This information will be used to support the development of a regulatory basis for a potential revision of the 10 CFR part 50, appendix I, regulations and associated guidance.

A. Issue No. 1: Closer Alignment of 10 CFR Part 20 and 10 CFR Part 50, Appendix I, With the Terminology and Methodology Recommendations of ICRP Publication 103

The ICRP has published four primary sets of radiological protection recommendations, namely, ICRP Publication 2 (1959), ICRP Publication 26 (1977); ICRP Publication 60 (1990), and ICRP Publication 103 (2007). As noted earlier, the 10 CFR part 20 regulations are based on ICRP Publication 26, while the 10 CFR part 50, appendix I, requirements are based on ICRP Publication 2. One important way the dose terminology used in 10 CFR part 20 deviates from the ICRP Publication 26 recommendations is by the use of the term ''Total Effective Dose Equivalent.'' This term was created by the NRC to describe the summation of internal and external exposure. The ICRP Publication 26 recommendations use the phrase ''the sum of the dose-equivalent from external exposure'' and ''the committed effective dose equivalent from the intake of radionuclides.'' The ICRP Publication 60 recommendations changed the way tissue and radiation weighting factors were defined and used. There was also a corresponding change in the terminology from quality factors to radiation weighting factors. The ICRP Publication 60 introduced the terms ''Effective Dose'' (ED) and ''Total Effective Dose'' (TED) to clearly represent the summation of the dose contributions from external exposure and the intake of radioactive material.

The ICRP Publication 103 recommendations retained the terminology of effective dose and equivalent dose but made several revisions to the calculation of dose, including: (1) The modification of the modeling used for calculation of radiation exposures; (2) changes in tissue weighting factors and radiation

weighting factors; and (3) modifications of the metabolic models used to represent the movement of radioactive material through the human body, by use of computer models. These revisions have resulted in the development of reference computational phantoms that are specific models for adult males and females, 15-year-old males and females, and for various other age groups, including infants and 1-year-old, 5-year-old, and 10-year-old children. The reference phantoms for the human body are described in general terms in ICRP Publication 103 and more specifically in ICRP Publication 110 (2009).[14]

The availability of new models for different age groups provides the opportunity to calculate the numeric values for public exposure to effluents in a more comprehensive manner as compared to the previous calculation methodology of basing assessments primarily on an adult member of the public. As part of the potential rulemaking to amend 10 CFR part 20, the NRC is considering the use of an age and gender weighted dose coefficient and revising the definition of the term ''reference man'' [15] to be used in environmental dose calculations. With respect to the implementation of 10 CFR part 50, appendix I, RG 1.109 considers four age groups: Infant, child, teenager, and adults. The development of age-specific dose coefficients per unit intake of radioactivity (inhaled or ingested) is described in NUREG–0172, ''Age-Specific Radiation Dose Commitment Factors for a One-Year Intake.'' As part of this ANPR, the NRC is considering the use of an age and gender averaged approach in any revision to the 10 CFR part 20 and 10 CFR part 50, appendix I.

The NRC staff, as part of its development of the regulatory basis, will consider revising the regulations in 10 CFR part 20 and 10 CFR part 50, appendix I, as well as making conforming changes to other NRC regulations to incorporate the ICRP Publication 103 terms, equivalent dose, effective dose, and ''Total Effective Dose.'' The NRC staff recognizes the preference, from a regulatory stability standpoint, for retaining TEDE but will analyze, in the regulatory basis, the advantages and disadvantages of replacing TEDE with TED in the NRC regulations. The reader is encouraged to review the parallel ANPR (Docket ID NRC–2009–0279, 79 FR 43284) on the proposed revision to 10 CFR part 20 for more details.

The following options and questions are intended to elicit information and initiate a dialog with the public, the regulated community, and other stakeholders in future workshops and meetings.

Option 1a: Do not change the basis of 10 CFR part 50, appendix I, and continue to use the existing requirements and NRC guidance. This option is based on current NRC regulations continuing to adequately protect the public, although 10 CFR part 20 and 10 CFR part 50, appendix I, are based on different methods of assessing dose. Licensee compliance with 10 CFR part 50, appendix I, will continue to demonstrate that radioactive effluents to unrestricted areas are ALARA. If the NRC selects this option, the NRC may make minor revisions to update supporting NRC guidance, as most of such guidance was published in the late 1970s.

Option 1b: Revise the terminology and methodology for dose assessments in 10 CFR part 50, appendix I, to more closely align with the recommendations of ICRP Publication 103, in parallel with any revisions made to the 10 CFR part 20 regulations.[16] This approach would ensure a consistent application of regulatory criteria between 10 CFR part 20 and 10 CFR part 50, appendix I. This option would offer the opportunity to use to a common regulatory basis for calculating and reporting doses.

Questions

Question 1–1: What are the advantages and disadvantages of the NRC selecting option 1a?

The following questions are based upon the NRC selecting option 1b:

Question 1–2: What are the advantages and disadvantages of more closely aligning the 10 CFR part 50, appendix I, terminology and methodology for dose assessments with those of the ICRP Publication 103 recommendations?

Question 1–3: At this time, the NRC is contemplating a parallel rulemaking effort, one for 10 CFR part 20 and one for 10 CFR part 50, appendix I, with a common effective or compliance date for both rules. What are the advantages or disadvantages of the NRC conducting such a parallel rulemaking effort?

Question 1–4: What are the backfitting implications of applying option 1b to 10 CFR part 50 licensees? What are the issue finality implications of applying option 1b to those persons who hold NRC approvals under 10 CFR part 52 (*e.g.,* combined license holders and applicants, a holder of a standard design certification)?

Question 1–5: What cost savings would be realized over the life of the operational programs if dose calculation methods (for 10 CFR part 20 and 10 CFR part 50, appendix I) are standardized?

Question 1–6: What operational impacts and costs (per reactor unit) would be incurred by licensees (*e.g.,* in updating licensee programs, procedures, computer codes, training)?

Question 1–7: Would licensee costs and the operational impacts of complying with a revised 10 CFR part 50, appendix I, be similar for both BWRs and PWRs?

Question 1–8: Should all of the conforming changes to the dose based criteria in 10 CFR part 50 (*e.g.,* the TEDE criteria in 10 CFR 50.34(a)(1)(ii), 10 CFR 50.67, and appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 19, ''Control Room'') be changed coincident with the changes to 10 CFR part 50, appendix I, or should conforming changes to other parts of the regulations be conducted in a separate, later rulemaking?

Question 1–9: Should the NRC expand the number of age groups from 4 to 6 as recommended in ICRP Publication 103?

B. Issue No. 2: Scope of Changes to NRC Guidance Documents Associated With 10 CFR Part 50, Appendix I in Terms of Regulatory Guide 1.109

In the event of a revision of the 10 CFR part 50, appendix I, regulations, the NRC would need to consider making revisions to several guidance documents associated with the 10 CFR part 50, appendix I, regulations. In Enclosure 3 of SECY–08–0197, the NRC staff examined a tiered approach reflecting increasing levels of complexity of a revision to the associated guidance documents. The discussion in SECY–08–0197 considered three options for revising those guidance documents associated with 10 CFR part 50, appendix I. The NRC staff notes that the primary guidance document, RG 1.109, has not been updated since 1977.

The following options and questions are intended to elicit information and initiate a dialog with the public, the regulated community, and other

[14] ICRP Publication 110 (2009), ''Adult Reference Computational Phantoms.''

[15] The NRC regulations use the term ''Reference man,'' which means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base (10 CFR 20.1003, definition of ''Reference man'').

[16] See the 10 CFR part 20 ANPR (Docket ID NRC–2009–0279), published in the **Federal Register** on July 25, 2014 (79 FR 43284), for further details about potential revisions to 10 CFR part 20.

stakeholders in future workshops and meetings.

Option 2a: Limited Scope Revision (no changes to the numerical values)—Under this option, the proposed revision would include very limited changes to 10 CFR part 50, appendix I (*e.g.,* to change the design objectives for total body dose only), and would involve very limited changes to only one regulatory guide (*e.g.,* the dose coefficients in R.G. 1.109, Table B–1, ''Dose Factors for Exposure to a Semi-Infinite Cloud of Noble Gases,'' and Tables E–6, ''External Dose Factors for Standing on Contaminated Ground,'' to E–14, ''Ingestion Dose Factors for Infant,'' only).

Option 2b: Full Scope Revision—Under this option, the NRC would consider a complete revision to 10 CFR part 50, appendix I, and all NRC guidance documents, which would include a total of more than 30 regulatory guides, NUREGs, generic communications, and associated software programs. A full scope revision also involves evaluating new radwaste systems, updating dispersion models, new source terms, rewriting RG 1.109, RG 1.110, RG 1.111, and RG 1.112.

Option 2c: Expanded Scope Revision—Under this option, the NRC would include more substantive changes to the regulations and applicable guidance documents than included in Option 2a and potentially substantially less than that listed in Option 2b.

Questions

Question 2–1: Which Option (*i.e.,* what scope of changes to NRC guidance documents) seems most appropriate, and are other options available?

Question 2–2: What are the advantages and disadvantages of each of the three options?

C. Issue No. 3: Detailed Considerations for Revising 10 CFR Part 50, Appendix I

The questions in this section explore some of the specific technical details that may be associated with revising the design objectives. The NRC staff has identified the following options for potential revisions to the 10 CFR part 50, appendix I. It should be noted that the various options below are not considered to be mutually exclusive; that is, the NRC may consider one or more of these options, or various combinations of these options:

Option 3a: Maintain the numerical values of the 10 CFR part 50, appendix I, design objectives—the NRC staff would keep the numerical values for design objectives, but change the units. For example, the annual design objective for liquid effluents, which is currently a total body dose of 3 mrem on an annual basis, would be changed to an effective dose of 3 mrem.

Option 3b: Eliminate the use of organ dose as design objectives in 10 CFR part 50, appendix I, for liquid and gaseous effluents—the NRC staff would provide a single effective dose based criterion in lieu of specific organ dose criteria (*e.g.* thyroid).

Option 3c: Eliminate the use of annual gamma and beta-air doses for gaseous effluents—the NRC staff would eliminate annual gamma-air and beta-air doses for gaseous effluents or convert them to an effective dose.

Option 3d: Update cost-benefit criteria in Section II.D of 10 CFR part 50, appendix I—the NRC staff would update the constant dollar basis in the cost-benefit criteria in Section II.D of 10 CFR part 50, appendix I.

Option 3e: Disposition of Docket RM–50–2, ''Guides on Design Objectives for Light-Water-Cooled Nuclear Power Reactors,'' in the ''Concluding Statement of Position of the Regulatory Staff,'' pp. 25–30 (February 20, 1974)—the NRC staff would remove Docket RM–50–2 from 10 CFR part 50, appendix I, Section V, if the NRC staff determines that it is no longer applicable to any pending applications.

The following options for potential revisions to 10 CFR part 50, appendix I, are unrelated to the alignment with the ICRP Publication 103 terminology and methodology but have some implications for associated NRC guidance.

Option 3f: Light-water-cooled reactor provisions of 10 CFR part 50, appendix I—the NRC staff would expand scope of 10 CFR part 50, appendix I, to include designs other than Light-Water-Cooled Reactors.

Option 3g: Consolidation of NRC licensing guidance implementing 10 CFR part 50, appendix I—the NRC staff would consolidate some NRC guidance documents, if appropriate, and update the following RGs and NUREGs:

a. RG 1.21
b. RG 1.109
c. RG 1.206
d. RG 4.15
e. NUREG–1301
f. NUREG–1302
g. NUREG–0133
h. NUREG–0543
i. NUREG/CR–4013—LADTAP
j. NUREG/CR–4013—GASPAR
k. NUREG–0800

The following questions are intended to elicit information and initiate a dialog with the public, the regulated community, and other stakeholders in future workshops and meetings.

Questions

Question 3–1: Should the NRC focus on only those changes necessary to align 10 CFR part 50, appendix I, with ICRP Publication 103 dose calculation methods (*e.g.,* Issue 3, options 3a thru 3e) or should all of the specific changes identified in options 3a thru 3g be evaluated?

Question 3–2: What significant impacts would be expected if 10 CFR part 50, appendix I, were revised to include all of the options (Issue 3, options 3a thru 3g)?

Question 3–3: Given the scope of the regulatory and technical issues associated with making all of the specific changes identified in Issue 3, options 3a thru 3g, is there any merit in addressing selected options in future implementation phases of this rulemaking (or in separate rulemaking efforts)? If so, which of the options should be delayed?

Question 3–4: Should licensees still report doses separately for organs, such as skin and thyroid, whenever airborne effluent releases are dominated by radioactive iodines and noble gases?

Question 3–5: Should licensees continue to report skin doses, skin dose rates, total body dose rates, and organ doses (including thyroid doses) if organ doses are eliminated? Why or why not?

Question 3–6: Should the categories of releases described in 10 CFR part 50, appendix I (liquid activity, noble gases in gaseous releases, radioactive iodines, tritium, other nuclides in gaseous releases), be expanded or otherwise revised?

D. Issue No. 4: Metrication—Units of Radioactivity, Radiation Exposure, and Dose

The current 10 CFR part 20 radiation protection regulations were promulgated approximately 1 year prior to the publication of the NRC's metrication policy (57 FR 46202; October 7, 1992). The metrication policy addresses the units to be used to express radioactivity, radiation exposure and dose. Therefore, regulations referencing dose limits and other measurements are formatted with the SI units in parentheses. Other NRC regulations have instances in which the SI units are listed first, with the traditional or ''English'' units in parentheses. Numerical values listed in the 10 CFR part 20 appendices are given only in the traditional units. In SRM–SECY–12–0064, the Commission disapproved the elimination of traditional units or ''English'' dose units from the NRC's

regulations. The SRM further stated that both the traditional and SI units should be maintained.

Pursuant to the NRC's 1992 metrication policy, the NRC supports and encourages the use of the metric system of measurement by the nuclear industry. The 1992 policy directed that the NRC, beginning in 1993, publish the following documents in dual units, with the SI units listed first followed by the English units in parentheses: New regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. The NRC's policy further directs that NRC documents specific to a licensee, such as inspection reports and docketed material concerning a particular licensee, will be in the system of units employed by the licensee. Furthermore, all event reporting and emergency response communications between licensees, the NRC, and State and local authorities will use the traditional system of measurement. In a 1996 review of its 1992 metrication policy, the Commission stated that it does not intend to revisit the 1992 policy unless it is shown to cause an undue burden or hardship (61 FR 31169–31171; June 19, 1996).

The NRC has issued an ANPR concerning a potential revision to its radiation protection regulations in 10 CFR part 20. In its 10 CFR part 20 ANPR, the NRC staff is seeking input on how the Commission's metrication policy should be implemented, particularly with how the numerical values should be presented in appendix B of 10 CFR part 20. Appendix B of 10 CFR part 20 is set forth in a tabular format with nine columns providing each radionuclide's annual limits on intake (ALI) and derived air concentrations (DAC), effluent concentration limits for airborne and liquid releases to the general environment, and concentration limits for discharges to sanitary sewer systems in the traditional units of microcuries (μCi) or microcuries per milliliter (μCi/ml).

The concerns identified in the 10 CFR part 20 ANPR, such as the use of dual units (SI and traditional) are also relevant to the guidance used in implementing 10 CFR part 50, appendix I. For example, RG 1.109, presents traditional units of radioactivity, dose coefficients, and dose conversion factors, specifically in Table A–1, ''Bioaccumulation Factors to Be Used in the Absence of Site-Specific Data;'' Table B–1, ''Dose Factors for Exposure to a Semi-Infinite Cloud of Noble Gases;'' Table E–6, ''External Dose Factors for Standing on Contaminated Ground;'' Tables E–7 to E–10, ''Inhalation Dose Factors;'' and Tables E–11 to E–14, ''Ingestion Dose Factors.'' As noted in the 10 CFR part 20 ANPR, the conversion of the unit of radioactivity from the traditional unit of μCi to the SI unit of becquerel (Bq) is not a whole number or an integer value. As a result, the number of significant digits will result in different values, with the difference determined by the rounding of the numerical values. For example, if rounded to one significant digit, using the standard rounding conventions, the value in SI unit would be smaller than the value in μCi, and would be more restrictive. Therefore, the NRC staff is seeking to explore the implications of presenting dose coefficients, dose conversions factors, and cost-benefit ratios in both SI and traditional units. Licensees are encouraged to review the technical and metrication policy issues described in the 10 CFR part 20 ANPR, as they are not repeated here for brevity.

If 10 CFR part 20 and appendix B to 10 CFR part 20 were revised to include both SI and traditional units, then it would be necessary for consistency to also revise the numerical guides of Section II of 10 CFR part 50, appendix I, and guidance used to implement these requirements. Therefore, providing both sets of units may be perceived as resulting in a cumbersome set of regulatory criteria and tabulations in RG 1.109. Similarly, parallel revisions would need to be made to computer codes used to calculate doses such that dose results would be expressed in both units. One alternative could be to provide an expanded set of tables in the regulatory guide or a NUREG for the convenience of users. The use of traditional and SI units pose significant communication challenges given the potential for confusion when different sets of units are used. The NRC staff is interested in views of possible alternatives, and implications of alternatives on the format of regulations and guidance and impacts on plant operations in aligning any revisions to 10 CFR part 20 and 10 CFR part 50, appendix I, with the Commission's metrication policy.

The following questions are intended to elicit information and initiate a dialog with the public, the regulated community, and other stakeholders in future workshops and meetings.

Questions

Question 4–1: Should the annual radioactive effluent release reports contain both metric and English units (*e.g.,* metric units first, followed by English units in parentheses)? Would this be an undue burden or hardship, as identified in the Commission's 1996 review of the 1992 metrication policy (61 FR 31171; June 19, 1996)? Explain and provide examples.

Question 4–2: What costs or other impacts to operational programs would be incurred if metrication was changed as described above?

Question 4–3: Should the requirements of 10 CFR 20.2101(a) and the guidance of RGs 1.21 and 4.15 be revised and integrated with those in 10 CFR part 50, appendix I, thereby allowing licensees to provide records and reports in SI units only?

V. Public Meetings

The NRC plans to conduct public meetings and participate in industry workshops and conferences for the purpose of discussing the issues identified in this ANPR. The public meetings will provide forums for the NRC staff to discuss the issues and questions identified in this ANPR with external stakeholders and to receive information to support development of a regulatory basis for a potential revision to 10 CFR part 50, appendix I. The meetings are not intended to be a formal solicitation of comments, but rather to encourage stakeholders to provide feedback in written form during the ANPR comment period. The NRC will post public meeting announcements at least 10 calendar days before the date of the meetings at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Stakeholders should monitor this NRC public meeting Web site for information about the meetings and issues specific to the potential revision of 10 CFR part 50, appendix I, regulations and guidance.

VI. Cumulative Effects of Regulation

The NRC has implemented a program to address the possible ''Cumulative Effects of Regulation'' (CER) in the development of regulatory bases for rulemakings. The CER recognizes the challenges that licensees or other impacted entities (such as Agreement States) may face while implementing new NRC or other agency regulatory requirements. The CER is an organizational effectiveness challenge that results from a licensee or other impacted entity implementing a number of complex positions, programs or requirements within a prescribed implementation period and with limited available resources, including the ability to access technical expertise to address

a specific issue. The NRC is specifically requesting comments on the cumulative effects that may result from potential amendments to 10 CFR part 50, appendix I, and revisions to associated guidance documents. When developing comments on the possible cumulative effects of any future rulemaking to amend the 10 CFR part 50, appendix I, and associated guidance documents, please consider the following questions:

Questions

Question 5–1: If the NRC conducts a parallel rulemaking effort (amending its regulations in both 10 CFR part 20 and 10 CFR part 50, appendix I), should there be a separate, later compliance date (*i.e.,* a period of time between the rules' effective date and a date when licensees must be in compliance with the rules)? If so, when should the compliance date be set, *e.g.,* 1 year after the effective date? Two years? Another length of time? Please explain the rationale or justification for any such compliance date.

Question 5–2: What actions could be taken to reduce or minimize the implementation time?

Question 5–3: What other requirements, regulations, or orders, whether issued or promulgated by the NRC or another Federal agency, may compete with, or take priority over implementing any potential changes to 10 CFR part 50, appendix I? If so, what are the consequences, including associated costs, and how should they be addressed?

Question 5–4: If 10 CFR part 50, appendix I, is amended, what unintended consequences, including associated costs, may arise that would negate the benefits to revising it? What could be done to minimize unintended consequences?

In addition to responding to the questions above, please provide, if available, information on the costs and benefits of any potential revisions to the 10 CFR part 50, appendix I, regulations and associated guidance documents. This information will be used to support any regulatory analysis performed by the NRC.

VII. Plain Writing

The Plain Writing Act of 2010, (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comments on this ANPR with respect to the clarity and effectiveness of the language used.

VIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Cited documents	ADAMS Accession No.
Proposed Revision to 10 CFR part 20, ANPR (79 FR 43284; July 25, 2014)	ML14084A333
Extension of Comment Period for the 10 CFR part 20 ANPR (79 FR 69065; November 20, 2014)	ML14325A519
Proposed Revision to 40 CFR part 190, ANPR (79 FR 6509; February 4, 2014)	Not in ADAMS
SECY–01–0148, ''Processes For Revision of 10 CFR Part 20 Regarding Adoption Of ICRP Recommendations On Occupational Dose Limits And Dosimetric Models and Parameters,'' August 2, 2001.	ML011580363
SRM–SECY–01–0148, ''Processes For Revision of 10 CFR Part 20 Regarding Adoption Of ICRP Recommendations On Occupational Dose Limits And Dosimetric Models And Parameters,'' April 12, 2002.	ML021050104
SECY–08–0197, ''Options to Revise Radiation Protection Regulations And Guidance With Respect to the 2007 Recommendations of ICRP,'' December 18, 2008.	ML083360555
SRM–SECY–08–0197, ''Options To Revise Radiation Protection Regulations and Guidance With Respect to the 2007 Recommendations of ICRP,'' April 2, 2009.	ML090920103
SECY–12–0064, ''Recommendations For Policy and Technical Direction To Revise Radiation Protection Regulations and Guidance,'' April 25, 2012.	ML121020108
SRM–SECY–12–0064, ''Recommendations For Policy And Technical Direction To Revise Radiation Protection Regulations And Guidance,'' December 17, 2012.	ML12352A133
Regulatory Guide 1.21, ''Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power, Rev. 2,'' June 2009.	ML091170109
Regulatory Guide 1.109, ''Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I, Rev. 1,'' October 1977.	ML003740384
Regulatory Guide 1.110, ''Cost-Benefit Analysis for Radwaste Systems for Light-Water-Cooled Nuclear Power Reactors, Rev. 1,'' October 2013.	ML13241A052
Regulatory Guide 1.111, ''Methods for Estimating Atmospheric Transport and Dispersion of Gaseous Effluents in Routine Releases from Light-Water-Cooled Reactors, Rev. 1,'' July 1977.	ML003740354
Regulatory Guide 1.112, ''Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Light-Water-Cooled Nuclear Power Reactors, Rev. 1,'' March 2007.	ML070320241
Regulatory Guide 1.113, ''Estimating Aquatic Dispersion of Effluents from Accidental and Routine Reactor Releases for the Purpose of Implementing Appendix I, Rev. 1,'' April 1977.	ML003740390
Regulatory Guide 1.206, ''Combined License Applications for Nuclear Power Plants (LWR Edition),'' June 2007	ML070720184
Regulatory Guide 4.15, ''Quality Assurance for Radiological Monitoring Programs (Inception through Normal Operations to License Termination)—Effluent Streams and the Environment, Rev. 2,'' July 2007.	ML071790506
Docket RM–50–2, ''Guides on Design Objectives for Light-Water-Cooled Nuclear Power Plants''	ML14071A275
NUREG–0133, ''Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants: A Guidance Manual for Users of Standard Technical Specifications,'' October 1978.	ML091050057
NUREG–0172, ''Age-Specific Radiation Dose Commitment Factors for a One-Year Intake,'' November 1977	ML14083A242
NUREG–0543, ''Methods for Demonstrating LWR Compliance With the EPA Uranium Fuel Cycle Standard (40 CFR Part 190),'' February 1980.	ML081360410
NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' March 2007.	ML070660036
NUREG/CR–1276, ''User's Manual for LADTAP II—A Computer Program for Calculating Radiation Exposure to Man from Routine Releases of Nuclear Reactor Liquid Effluents,'' May 1980.	Not In ADAMS [17]
NUREG–1301, ''Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors,'' April 1991.	ML091050061

Cited documents	ADAMS Accession No.
NUREG–1302, ''Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Boiling Water Reactors,'' April 1991.	ML091050059
NUREG–1555, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Environmental Standard Review Plan (with Supplement 1 for Operating Reactor License Renewal),'' June 2013.	ML12335A667
NUREG/CR–4013, ''LADTAP II, ''Technical Reference and User Guide,'' April 1986	Not In ADAMS [18]
NUREG/CR–4653, ''GASPAR II—Technical Reference and User Guide,'' March 1987	Not In ADAMS [19]

The NRC may post additional materials to the Federal rulemaking Web site at *www.regulations.gov,* under Docket ID NRC–2014–0044. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0044), (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

IX. Rulemaking Process

The NRC will consider comments received or other information submitted in response to this ANPR in the development of the proposed draft regulatory basis or any other documents developed as a part of any potential revisions to the 10 CFR part 50, appendix I, regulations. The NRC, however, does not intend to provide responses to comments or other information submitted in response to this ANPR. If the NRC develops a regulatory basis sufficient to support a proposed rule, then there will be an opportunity for public comment when the proposed rule is published and the NRC will respond to such comments if and when it publishes a final rule. If the NRC develops draft supporting guidance or proposes revisions to existing guidance documents associated with the 10 CFR part 50, appendix I regulations, then the public, the regulated community, and other stakeholders will have an opportunity to provide comment on the draft guidance. If NRC decides not to pursue a 10 CFR part 50, appendix I rulemaking, as described in this ANPR, the NRC will publish a document in the **Federal Register** that will generally address public comments and withdraw this ANPR.

Dated at Rockville, Maryland, this 17th day of April, 2015.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2015–10408 Filed 5–1–15; 8:45 am]

BILLING CODE 7590–01–P

[17] NUREG/CR–1276, NUREG/CR–4013, and NUREG/CR–4653 are available through the Radiation Safety Information Computational Center at *https://rsicc.ornl.gov/Default.aspx.*

[18] See footnote 17.

[19] See footnote 17.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0933; Directorate Identifier 2014–NM–098–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes. This proposed AD was prompted by a design review, which revealed that no controlled bonding provisions are present on a number of critical locations inside the fuel tank or connected to the fuel tank wall; and no anti-spray cover is installed on the fuel shut-off valve (FSOV) in both wings. This proposed AD would require installing additional bonding provisions in the fuel tank, installing an anti-spray cover on the FSOV, and revising the airplane maintenance program by incorporating fuel airworthiness limitation items and critical design configuration control limitations. We are proposing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 18, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0933; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0933; Directorate Identifier 2014–NM–098–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0099, dated April 30, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes. The MCAI states:

> Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the Fokker 27 design in response to these regulations revealed that no controlled bonding provisions are present on a number of critical locations, inside the fuel tank or connected to the fuel tank wall, and no anti-spray cover is installed on the Fueling Shut-Off Valve (FSOV) in both wings.
>
> This condition, if not corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services developed a set of bonding modifications and anti-spray covers, introduced with Service Bulletin (SB) SBF27–28–071 Revision 1 (R1), that require opening of the fuel tank access panels. More information on this subject can be found in Fokker Services All Operators Message AOF27.043#03.
>
> For the reasons described above, this [EASA] AD requires installation of additional bonding provisions, and of anti-spray covers on the FSOV, that require opening of the fuel tank access panels.

Required actions also include revising the airplane maintenance program by incorporating fuel airworthiness limitation items and critical design configuration control limitations. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0933.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD affects 15 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of bonding provisions, anti-spray cover, and maintenance program revision.	70 work-hours × $85 per hour = $5,950	$0	$5,950	$89,250

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2015–0933; Directorate Identifier 2014–NM–098–AD.

(a) Comments Due Date

We must receive comments by June 18, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a design review, which revealed that no controlled bonding provisions are present on a number of critical locations inside the fuel tank or connected to the fuel tank wall; and no anti-spray cover is installed on the fuel shut-off valve (FSOV) in both wings. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Installation of Bonding Provisions and Anti-Spray Cover

At the next scheduled opening of the fuel tanks after the effective date of this AD, but no later than 84 months after the effective date of this AD: Install additional bonding provisions at the applicable locations, and install an anti-spray cover on the FSOV in both wings, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(h) Revision of Maintenance or Inspection Program

Within 30 days after installing the bonding provisions and anti-spray cover specified in paragraph (g) of this AD: Revise the airplane maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and Critical Design Configuration Control Limitations (CDCCLs), using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(i) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch; ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1137. 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. The AMOC approval letter must specifically reference this AD.

(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 Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0099, dated April 30, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0933.

Issued in Renton, Washington, on April 17, 2015.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10180 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0937; Directorate Identifier 2014–NM–024–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–24–05, for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. AD 2011–24–05 currently requires repetitive inspections for cracking of the hole(s) of the horizontal flange of the keel beam, and repair if necessary. Since we issued AD 2011–24–05, a determination was made that the rototest inspection and applicable corrective actions of a certain fastener hole were inadvertently omitted from the requirements in that AD. This proposed AD would change the inspection compliance times, and, for certain airplanes, would add a one-time ultrasonic inspection for cracking at a certain fastener hole. This proposed AD would also provide optional terminating action for the repetitive inspections. We are proposing this AD to detect and correct cracking of the fastener holes, which could result in rupture of the keel beam, and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 18, 2015.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2015–0937; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0937; Directorate Identifier 2014–NM–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On November 7, 2011, we issued AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. AD 2011–24–05 requires actions intended to address the unsafe condition on the products listed above.

Since we issued AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0010R1, dated May 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During A330 and A340 aeroplanes fatigue tests, cracks were detected on the RH [right-hand] and LH [left-hand] sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB).
>
> This condition, if not detected and corrected, could lead to keel beam rupture which would affect the area structural integrity of the area.
>
> Prompted by this potential unsafe condition, EASA issued AD 2006–0315 [*http://ad.easa.europa.eu/blob/easa_ad_2006_0315.pdf/AD_2006-0315*] (later revised to R1) to require repetitive special detailed inspections (SDI) [rotating probe inspection for cracking] on the horizontal flange of the keel beam in the area of first fastener hole aft of Frame (FR) 40 in order to maintain the structural integrity of the aeroplane.
>
> After that [EASA] AD was issued, EASA issued AD 2010–0024 [which corresponds to FAA AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)], retaining the inspection requirements of EASA AD 2006–0315R1 [*http://ad.easa.europa.eu/blob/easa_ad_2006_0315R1.pdf/AD_2006-0315R1*], which was superseded, extending the applicability to aeroplanes with Airbus Mod 49202 embodied, and reducing the inspection thresholds and intervals.
>
> Since that [EASA] AD [2010–0024] was issued, a new fatigue and damage tolerance evaluation has been conducted by Airbus, which concluded that due to the aeroplane utilization, the current inspection threshold and intervals have to be modified.
>
> In addition, it was determined that the rototest inspection of fastener hole Nr 6, necessary to ensure that no crack was left unrepaired at the time of fastener hold cold working, was inadvertently not included in Revisions 01 and 02 of both Airbus Service Bulletin (SB) A330–57–3098 and A340–57–4106.
>
> Prompted by these findings, EASA issued AD 2014–0010 [*http://ad.easa.europa.eu/blob/easa_ad_2014-0010.pdf/AD_2014-0010*], retaining the requirements of EASA AD 2010–0024, which was superseded, and redefined the inspection thresholds and intervals [by reducing certain compliance times], and added a one-time ultrasonic inspection of fastener hold Nr 6 in the junction keel beam fitting at FR40 on both LH and RH side[s].
>
> Following issuance of EASA AD 2014–0010, it was identified that there was a need for clarifications [of affected airplanes] * * *.

The compliance times vary depending on airplane utilization and configuration. The earliest compliance time for the initial rotating probe inspections is the later of (1) before 10,400 total flight cycles or 67,800 total flight hours, whichever occurs first; and (2) within 24 months or 14,590 flight cycles or 43,790 flight hours, whichever occurs first. The latest compliance time for the initial inspections is the later of (1) before 20,800 total flight cycles or 67,900 total flight hours, whichever occurs first; and (2) within 24 months or 21,180 flight cycles or 63,560 flight hours, whichever occurs first. The compliance times for the repetitive intervals range between 7,800 flight cycles or 50,900 flight hours and 10,700 flight cycles or 35,200 flight hours. The compliance times for the one-time ultrasonic inspection are the latest of (1) 21,000 flight cycles or 60,600 flight hours and within 2,400 flight cycles or 24 months; or the latest of (2) 22,100 flight cycles and 64,400 flight hours, or within 1,300 flight cycles or 24 months.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0937.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012.
- Airbus Service Bulletin A330–57–3090, dated June 15, 2011.
- Airbus Service Bulletin A330–57–3098, dated August 30, 2007.
- Airbus Service Bulletin A330–57–3098, Revision 02, June 15, 2011.
- Airbus Service Bulletin A330–57–3098, Revision 03, including Appendix 01, dated September 24, 2014.
- Airbus Service Bulletin A330–57–3117, including Appendix 01, dated January 25, 2013.
- Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012.
- Airbus Service Bulletin A340–57–4098, Revision 01, dated June 15, 2011.
- Airbus Service Bulletin A340–57–4106, dated August 30, 2007.
- Airbus Service Bulletin A340–57–4106, Revision 02, including Appendix 01, dated August 30, 2007.
- Airbus Service Bulletin A340–57–4106, Revision 03, including Appendix 01, dated September 24, 2012.
- Airbus Service Bulletin A340–57–4126, including Appendix 01, dated January 25, 2013.

This service information describes procedures for inspections for cracking of the hole(s) of the horizontal flange of the keel beam, and contacting the manufacturer for repair instructions. Additionally, this service information describes procedures for a one-time ultrasonic inspection for cracking at fastener hole ''Nr 6,'' and provides

optional terminating action for the repetitive inspections.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing widespread fatigue damage (WFD) was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 35 airplanes of U.S. registry.

The actions that are required by AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), and retained in this proposed AD take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $191 per product. Based on these figures, the estimated cost of the actions that are required by AD 2011–24–05 is $3,676 per product.

We also estimate that it would take about 23 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $68,425, or $1,955 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), and adding the following new AD:

Airbus: Docket No. FAA–2015–0937; Directorate Identifier 2014–NM–024–AD.

(a) Comments Due Date

We must receive comments by June 18, 2015.

(b) Affected ADs

This AD replaces AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011).

(c) Applicability

(1) This AD applies to the airplanes identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD, certificated in any category, except as provided by paragraph (c)(2) of this AD.

(i) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(ii) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(2) This AD does not apply to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 (installation of titanium doubler on both sides) has been accomplished. AD 2007–12–08, Amendment 39–15086 (72 FR 31171, June 6, 2007), applies to these airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracks on the keel beam fitting and the front spar of the center wing box. This AD was also prompted by a determination that the rototest inspection and applicable corrective actions of fastener hole Nr 6 were inadvertently omitted from the requirements in AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011). We are issuing this AD to detect and correct cracking of the fastener holes, which could result in rupture of the keel beam, and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Non-Destructive Test (NDT) Inspection

This paragraph restates the requirements of paragraph (n) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with new service information and revised credit for certain actions. At the applicable time in paragraph (g)(1) or (g)(2) of this AD, do an NDT inspection of the hole(s) of the horizontal flange of the keel beam located on frame (FR) 40 datum on the right-hand (RH) and/or left-hand (LH) side of the fuselage, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(3), (g)(4), (g)(5), or (g)(6) of this AD. Accomplishing an inspection required by paragraph (j) of this AD terminates the inspections required by this paragraph.

(1) For airplanes on which an inspection required by paragraph (h) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), has not been done as of January 3, 2012 (the effective date of AD 2011–24–05): At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) For all airplanes except those identified in paragraph (g)(1)(ii) of this AD: Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after January 3, 2012 (the effective date AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(ii) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, except those on which Airbus modification 49202 has been embodied in production, or Airbus Service Bulletin A330–57–3090 has been embodied in service, and Model A340–200 and –300 series airplanes, except those on which Airbus modification 49202 has been embodied in production or Airbus Service Bulletin A340–57–4098 has been embodied in service, and except Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 has been accomplished: At the earlier of the times specified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD.

(A) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; depending on the configuration of the aircraft model; or within 3 months after September 13, 2007, whichever occurs later. The compliance times for Model A330 post-mod. 41652 and pre-mod. 44360, post-mod. 44360, and pre-mod. 49202 (specified in Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006); and Model A340 post-mod. 41652, post-mod. 43500 and pre-mod. 44360, post-mod. 44360 and pre-mod. 49202, and weight variant 027 (specified in Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006); specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(B) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(2) For airplanes on which an inspection required by paragraph (h) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), has been done as of January 3, 2012 (the effective date of AD 2011–24–05): At the earlier of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within the ''Mandatory Intervals'' given in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; as applicable.

(ii) Within the applicable ''Mandatory Interval'' specified in table 1 of Paragraph 1.E.(2). of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011,; or Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later.

(3) Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011.

(4) Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 05, dated November 13, 2012.

(5) Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011.

(6) Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012.

(h) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (p) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011). If no cracking is found during any inspection required by paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight: Install a new or oversized fastener, as applicable; seal the fastener; and do all other applicable actions; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(3), (g)(4), (g)(5), or (g)(6) of this AD.

(2) Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2). of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2014; as applicable.

(i) Retained Corrective Action and Optional Modification

(1) This paragraph restates the requirements of paragraph (o) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with revised method of compliance language. If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) This paragraph restates the requirements of paragraph (r) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with new service information and revised method of compliance language. Modifying the fastener installation in the junction keel beam fitting at FR 40, as specified in paragraph (i)(2)(i), (i)(2)(ii), (i)(2)(iii), or (i)(2)(iv) of this AD, as applicable, terminates the requirements of paragraphs (g) and (h) of this AD; except, for airplanes on which a crack was detected at hole 5 before oversizing of the keel beam, in accordance with step 3.B.(1)(b)*3* of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3098, dated August 30, 2007; or Airbus Service Bulletin A340–57–4106, dated August 30, 2007; or in accordance with step 3.C.(2)(c) of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3098, Revision 03, including Appendix 01, dated September 24, 2012, or Airbus Service Bulletin A340–57–4106, Revision 03, including Appendix 01, dated September 24, 2012; before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. In case of any crack finding during any modification specified in this paragraph: Where the service information specifies to contact Airbus, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(i) Modification in accordance with Airbus Service Bulletin A330–57–3098, dated August 30, 2007, before January 3, 2012 (the effective date of AD 2011–24–05,

Amendment 39–16869 (76 FR 73496, November 29, 2011)).

(ii) Modification in accordance with Airbus Service Bulletin A330–57–3098, Revision 03, including Appendix 01, dated September 24, 2012, before the effective date of this AD.

(iii) Modification in accordance with Airbus Service Bulletin A340–57–4106, dated August 30, 2007, before January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)).

(iv) Modification in accordance with Airbus Service Bulletin A340–57–4106, Revision 03, including Appendix 01, dated September 24, 2012, before the effective date of this AD.

(j) New Repetitive Rotating Probe Inspections

At the applicable times specified in paragraphs (j)(1) and (j)(2) of this AD: Do a rotating probe inspection for cracking of the fastener hole(s) of the horizontal flange of the keel beam located on FR 40 datum on the RH and LH side of the fuselage, as applicable to airplane type and depending on airplane configuration and utilization, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable. Repeat the inspection thereafter at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable. Accomplishing an inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before exceeding the applicable compliance times specified in the ''mandatory threshold'' column of the tables in paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable; or within 12 months after the effective date of this AD; whichever occurs later.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection within the applicable compliance times specified in the ''mandatory interval'' column of the tables in paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable; or within 12 months after the effective date of this AD; whichever occurs later.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the initial rotating probe inspection that is part of the inspections required by paragraphs (g) and (j)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD.

(i) Airbus Technical Disposition F57D03012810, Issue B, dated August 18, 2003.

(ii) Airbus Technical Disposition 582.0651/2002, Issue A, dated October 17, 2002.

(2) This paragraph restates the credit for the actions specified in paragraph (k) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), if those actions were performed before January 3, 2012 (the effective date of AD 2011–24–05), using the service information specified in paragraphs (k)(2)(i) through (k)(2)(viii) of this AD.

(i) Airbus Service Bulletin A330–57–3081, dated October 30, 2003.

(ii) Airbus Service Bulletin A330–57–3081, Revision 01, dated May 18, 2004.

(iii) Airbus Service Bulletin A330–57–3081, Revision 02, including Appendix 01, dated January 24, 2006.

(iv) Airbus Mandatory Service Bulletin A330–57–3081, Revision 03, dated July 31, 2009.

(v) Airbus Service Bulletin A340–57–4089, dated October 30, 2003.

(vi) Airbus Service Bulletin A340–57–4089, Revision 01, dated March 2, 2004.

(vii) Airbus Service Bulletin A340–57–4089, Revision 02, including Appendix 01, dated January 24, 2006.

(viii) Airbus Mandatory Service Bulletin A340–57–4089, Revision 03, dated July 31, 2009.

(l) New One-Time Ultrasonic Inspection

For airplanes in Configuration 2, as defined in the applicable service information identified in paragraph (l)(3), (l)(4), (l)(5), or (l)(6) of this AD, on which the modification has been done as of the effective date of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (l)(3), (l)(4), (l)(5), or (l)(6) of this AD; as applicable to airplane type; and on which fastener hole ''Nr 5'' has been bushed before embodiment of Airbus Service Bulletin A330–57–3098, or Airbus Service Bulletin A340–57–4106, as applicable; or on which a crack has been found on fastener hole ''Nr 5'' during embodiment of Airbus Service Bulletin A330–57–3098, or Airbus Service Bulletin A340–57–4106, as applicable: At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, do a one-time ultrasonic inspection for cracking at fastener hole ''Nr 6'' in the junction keel beam fitting at FR 40 LH and RH sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3117, including Appendix 01, dated January 25, 2013; or Airbus Service Bulletin A340–57–4126, including Appendix 01, dated January 25, 2013; as applicable.

(1) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes: At the later of the times specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3117, including Appendix 01, dated January 25, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: At the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A340–57–4126, including Appendix 01, dated January 25, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(3) Airbus Service Bulletin A330–57–3098, Revision 01, dated July 31, 2009.

(4) Airbus Service Bulletin A330–57–3098, Revision 02, dated June 15, 2011.

(5) Airbus Service Bulletin A340–57–4106, Revision 01, dated July 31, 2009.

(6) Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.

(m) Corrective Actions

(1) If no cracking is found during any inspection required by paragraph (j) of this AD, before further flight: Install new or oversized fastener, as applicable; seal the fastener; and do all other applicable corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable. Thereafter, repeat the inspection required by paragraph (j) of this AD at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2)., of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, including Appendix 01, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, including Appendix 01, dated November 13, 2012; as applicable.

(2) If any crack is found during any inspection required by paragraph (j) or (l) of this AD; before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Airplanes Excluded From Certain Requirements

(1) For airplanes on which a rototest was done at fastener hole Nr 6 before cold working of the fastener hole during accomplishment of the actions specified in the applicable service information identified in paragraph (n)(1)(i), (n)(1)(ii), (n)(1)(iii), or (n)(1)(iv) of this AD: The ultrasonic inspection specified in paragraph (l) of this AD is not required.

(i) Airbus Service Bulletin A330–57–3098, Revision 01, dated July 31, 2009.

(ii) Airbus Service Bulletin A330–57–3098, Revision 02, dated June 15, 2011.

(iii) Airbus Service Bulletin A340–57–4106, Revision 01, dated June 31, 2009.

(iv) Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.

(2) For airplanes that have been modified as of the effective date of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (n)(1)(i), (n)(1)(ii), (n)(1)(iii), or (n)(1)(iv) of this AD: No action is required by this paragraph, except as otherwise required by paragraph (l) of this AD and, provided that if any crack was found during any modification specified in this paragraph and the service information specified to contact Airbus, repair was done before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Optional Terminating Actions

(1) Modification of an airplane in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (o)(1)(i), (o)(1)(ii), (o)(1)(iii), (o)(1)(iv), (o)(1)(v), or (o)(1)(vi) of this AD; as applicable to airplane type and depending on airplane configuration; terminates the requirements of this AD, provided that in case of any crack finding during any modification specified in this paragraph, and the service information specifies to contact Airbus, repair is done before further flight, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature

(i) Airbus Service Bulletin A330–57–3090, dated March 27, 2006.

(ii) Airbus Service Bulletin A330–57–3090, Revision 01, dated June 15, 2011.

(iii) Airbus Service Bulletin A330–57–3098, Revision 03, including Appendix 01, dated September 24, 2012.

(iv) Airbus Service Bulletin A340–57–4098, dated March 27, 2006.

(v) Airbus Service Bulletin A340–57–4098, Revision 01, dated June 15, 2011.

(vi) Airbus Service Bulletin A340–57–4106, Revision 03, including Appendix 01, dated September 24, 2012.

(2) Accomplishment of the ultrasonic inspection required by paragraph (l) of this AD and all applicable corrective actions required by paragraph (m) of this AD terminates the requirements of this AD for those airplanes.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. 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. The AMOC approval letter must specifically reference this AD.

(2) AMOCs approved previously for AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), are approved as AMOCs for the corresponding provisions of this AD.

(3) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0010R1, dated May 5, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0937.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 13, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10177 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0934; Directorate Identifier 2014–NM–030–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. This proposed AD was prompted by reports of defective fire extinguisher tubes. It was determined the defects were caused by corrosion. This proposed AD would require repetitive general visual inspections of the fire extinguisher tubes for cracking and corrosion, and replacement of any cracked tube with a serviceable tube, if necessary. We are proposing this AD to detect and correct cracking and corrosion in the fire extinguisher tubes, which could impact the capability to extinguish an engine fire, and possibly result in damage to the airplane and injury to the passengers.

DATES: We must receive comments on this proposed AD by June 18, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0934; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0934; Directorate Identifier 2014–NM–030–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2013–0299, dated December 19, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The MCAI states:

> Several defective extinguisher tubes have been reported on certain Dassault Aviation Fan Jet Falcon aeroplanes. The results of the investigations concluded that these occurrences were caused by corrosion.
>
> This condition, if not detected and corrected, could impact the capability to extinguish an engine fire, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> For the reason described above, this [EASA] AD requires repetitive [general visual] inspections [for cracking and corrosion] of the fire extinguisher tubes and, depending on findings, the replacement of an affected part with a serviceable part (improved fire extinguisher tube). It also proposes the replacement of those tubes with the ''old Part Number'' (P/N) with a serviceable part with the new P/N as a terminating action. In addition, this [EASA] AD prohibits installation of an affected tube on an aeroplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0934.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 170 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $57,800, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2015–0934; Directorate Identifier 2014–NM–030–AD.

(a) Comments Due Date

We must receive comments by June 18, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by reports of defective fire extinguisher tubes. It was determined the defects were caused by

corrosion. We are issuing this AD to detect and correct cracking and corrosion in the fire extinguisher tubes, which could impact the capability to extinguish an engine fire, and possibly result in damage to the airplane and injury to the passengers.

(f) Compliance

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

(g) Inspection

For airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within 13 months or 450 flight hours, whichever occurs first after the effective date of this AD, do a general visual inspection of the fire extinguisher tubes for cracking and corrosion, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). Repeat the inspection thereafter at intervals not to exceed 13 months.

(1) Model FAN JET FALCON airplanes and Model FAN JET FALCON SERIES C, D, E, F, and G airplanes, equipped with any fire extinguisher tubes having part numbers MY20791–101, MY20791–101–1, MY20791–102, MY20791–102–1, MY20791–117, and MY20791–112.

(2) Model MYSTERE–FALCON 200 airplanes equipped with any fire extinguisher tubes having part numbers M20H791000210B1 and M20H791000240B1.

(3) Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes equipped with any fire extinguisher tubes having part numbers M20R791101, M20R791101A1, and M20R791102.

(h) Corrective Action

If, during any inspection required by paragraph (g) of this AD, any cracking or corrosion is found, before further flight, replace the tube with a serviceable tube having a part number specified in Table 1 of paragraph (h) of this AD, as applicable.

TABLE 1 OF PARAGRAPH (h) OF THIS AD—SERVICEABLE FIRE EXTINGUISHER TUBES

For model—	Equipped with affected pin—	Replace with serviceable pin—
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791–101	MY20791-101–2
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791–101–1	MY20791–101–2
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791–102	MY20791–102–2
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791-102–1	MY20791–102–2
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791–117	MY20791–117–1
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes	MY20791–112	MY20791–112–1
MYSTERE–FALCON 200 airplanes	M20H791000210B1	M20H791000210B2
MYSTERE–FALCON 200 airplanes	M20H791000240B1	M20H791000240B2
MYSTERE–FALCON 20-C5, 20–D5, 20–E5, and 20–F5 airplanes	M20R791101	M20R791101A2
MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes	M20R791101A1	M20R791101A3
MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes	M20R791102	M20R791102A2

(i) Terminating Action for the Repetitive Inspections

Replacement of an affected tube with a serviceable tube, as required by paragraph (h) of this AD, constitutes a terminating action for the repetitive inspections required by paragraph (g) of this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install a tube having a part number identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, on any airplane.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. 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. The AMOC approval letter must specifically reference this AD.

(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 Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0299, dated December 19, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0934.

Issued in Renton, Washington, on April 17, 2015.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10179 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2015–0248]

RIN 1625–AA00

Safety Zone; NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi Sea, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone that extends 500 meters from the outer edge of the DRILLSHIP NOBLE DISCOVERER, as well as 500 meters from those points, suitably marked by a buoy, where the DRILLSHIP NOBLE DISCOVERER's mooring spread meets the ocean's surface. This safety zone would be in effect both when the DRILLSHIP NOBLE DISCOVERER is anchored and when deploying and recovering moorings. As a result, the size and shape of the safety zone will vary, depending on how far from the vessel the mooring spread is deployed, which is expected to be no more than 1,000 meters. This safety zone would be in effect when the DRILLSHIP NOBLE DISCOVERER is on

location in order to drill exploratory wells at various prospects located in the Chukchi Sea Outer Continental Shelf, Alaska, from 12:01 a.m. on July 1, 2015 through 11:59 p.m. on October 31, 2015. Lawful demonstrations may be conducted outside of the safety zone.

DATES: Comments and related material must be received by the Coast Guard on or before June 3, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0248 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LCDR Jason Boyle, Seventeenth Coast Guard District (dpi); telephone 907–463–2821, *Jason.t.boyle@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2015–0248), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0248] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

http://www.regulations.gov, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2015–0248'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2015–0248 and click ''Search.'' Click the ''open Docket Folder'' in the ''Actions'' column.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

The Coast Guard does not plan to hold a public meeting. But you may submit a request for one by using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

Shell Exploration & Production Company has proposed and received permits for drill sites within the Burger prospects, Chukchi Sea, Alaska.

During the 2015 timeframe, Shell Exploration & Production Company has proposed drilling exploration wells at various Chukchi Sea prospects depending on favorable ice conditions, weather, sea state, and any other pertinent factors. Each of these drill sites will be permitted for drilling in 2015 to allow for operational flexibility in the event sea ice conditions prevent access to one of the locations. The number of actual wells that will be drilled will depend on ice conditions and the length of time available for the 2015 drilling season. The predicted ''average'' drilling season, constrained by prevailing ice conditions and regulatory restrictions, is long enough for two to three typical exploration wells to be drilled.

The actual order of drilling activities will be controlled by an interplay between actual ice conditions immediately prior to a rig move, ice forecasts, any regulatory restrictions with respect to the dates of allowed operating windows, whether the planned drilling activity involves only drilling the shallow non-objective section or penetrating potential hydrocarbon zones, the availability of permitted sites having approved shallow hazards clearance, the anticipated duration of each contemplated drilling activity, the results of preceding wells and Marine Mammal Monitoring and Mitigation plan requirements.

The DRILLSHIP NOBLE DISCOVERER has a ''persons on board''

capacity of 124, and it is expected to be at capacity for most of its operating period. The DRILLSHIP NOBLE DISCOVERER's personnel will include its crew, as well as Shell employees, third party contractors, Alaska Native Marine Mammal Observers and possibly Bureau of Safety and Environmental Enforcement (BSEE) personnel.

While conducting exploration drilling operations, the DRILLSHIP NOBLE DISCOVERER will be anchored using an anchoring system consisting of an 8-point anchored mooring spread attached to the onboard turret and could have a maximum anchor radius of 3,600 ft (1,100 m). The center point of the DRILLSHIP NOBLE DISCOVERER will be positioned within the prospect location in the Chukchi Sea.

The DRILLSHIP NOBLE DISCOVERER will move into the Chukchi Sea on or about July 1, 2015 and onto a prospect location when ice allows. Drilling will conclude on or before October 31, 2015. The drillship and support vessels will depart the Chukchi Sea at the conclusion of the 2015 drilling season.

Shell Exploration & Production Company made a request that the Coast Guard establish a safety zone around the DRILLSHIP NOBLE DISCOVERER due to safety concerns for both the personnel aboard the DRILLSHIP NOBLE DISCOVERER and the environment. Shell Exploration & Production Company indicated that it is highly likely that any allision or inability to identify, monitor or mitigate any risks or threats, including ice-related hazards that might be encountered, may result in a catastrophic event. Incursions into the areas near the drilling vessels by unapproved vessels could degrade the ability to monitor and mitigate such risks.

In evaluating the request for a safety zone, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the operation; (2) safety concerns for personnel aboard the vessel; (3) concerns for the environment given the sensitivity of the environmental and the importance of fishing and hunting to the indigenous population; (4) the lack of any established shipping fairways, and fueling and supply storage/operations which increase the likelihood that an allision would result in a catastrophic event; (5) the recent and potential future maritime traffic in the vicinity of the proposed areas; (6) the types of vessels navigating in the vicinity of the proposed area; (7) the structural configuration of the vessel, and (8) the need to allow for lawful demonstrations without endangering the safe operation of the vessel.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of the proposed temporary safety zone. The proposed regulation would significantly reduce the threat of allisions that could result in oil spills, and other releases. Furthermore, the proposed regulation would increase the safety of life, property, and the environment in the Chukchi Sea by prohibiting entry into the zone unless specifically authorized by the Commander, Seventeenth Coast Guard District, or a designated representative. Due to the remote location and the need to protect the environment, the Coast Guard may use criminal sanctions to enforce the safety zone as appropriate.

The purpose of the temporary safety zone is to protect the drillship from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the drillship will significantly reduce the threat of allisions, which could result in oil spills and releases of natural gas, and thereby protects the safety of life, property, and the environment.

C. Discussion of Proposed Rule

For the reasons described above, the Coast Guard is proposing to establish a temporary safety zone around the DRILLSHIP NOBLE DISCOVERER while anchored or deploying and recovering moorings on location in order to drill exploratory wells in various locations in the Chukchi Sea Outer Continental Shelf, Alaska from July 1 to October 31, 2015.

The proposed temporary safety zone would encompass the area that extends 500 meters from the outer edge of the DRILLSHIP NOBLE DISCOVERER, as well as 500 meters from those points, suitably marked by a buoy, where the DRILLSHIP NOBLE DISCOVERER's mooring spread meets the ocean's surface. This safety zone will be in effect both when the DRILLSHIP NOBLE DISCOVERER is anchored and when deploying and recovering moorings. As a result, the size and shape of the safety zone will vary, depending on how far from the vessel the mooring spread is deployed, which is expected to be no more than 1,000 meters. No vessel would be allowed to enter or remain in this proposed safety zone except the following: An attending vessel or a vessel authorized by the Commander, Seventeenth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at 907–463–2000.

For any group intending to conduct lawful demonstrations in the vicinity of the rig, these demonstrations must be conducted outside the safety zone.

D. Regulatory Analyses

The Coast Guard developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not a significant regulatory action due to the location of the DRILLSHIP NOBLE DISCOVERER on the Outer Continental Shelf and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

2. Small Entities

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), the Coast Guard has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Burger Prospects of the Chukchi Sea.

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons: This rule will enforce a safety zone around a drilling unit facility that is in areas of the Chukchi Sea not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic

can pass safely around the safety zone without incurring additional costs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Jason Boyle, Coast Guard Seventeenth District, Office of Prevention; telephone 907–463–2821, *Jason.t.boyle@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000.00 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

The Coast Guard analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandants Instruction.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.T17–0248 to read as follows:

§ 147.T17–0248 Safety Zone; DRILLSHIP NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi Sea, Alaska.

(a)(1) *Description.* The DRILLSHIP NOBLE DISCOVERER will be engaged in exploratory drilling operations at various locations in the Chukchi Sea from July 1, 2015 through October 31, 2015. The DRILLSHIP NOBLE DISCOVERER will be anchored while conducting exploratory drilling operations with the center point of the vessel located at the coordinates listed in Table 1.

(2) *Safety Zone.* The area that extends 500 meters from the outer edge of the DRILLSHIP NOBLE DISCOVERER, as well as 500 meters from those points, suitably marked by a buoy, where the DRILLSHIP NOBLE DISCOVERER's mooring spread meets the ocean's surface is a safety zone. Lawful demonstrations may be conducted outside of the safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel; or

(2) A vessel authorized by the Commander, Seventeenth Coast Guard District, or a designated representative.

Dated: April 8, 2015.

Daniel B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2015–10376 Filed 5–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

[Docket No. ACF–2013–0001–0001]

RIN 0970–AC53

Child Care and Development Fund (CCDF) Program

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Office of Child Care (OCC) in the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) is withdrawing a previously published notice of proposed rulemaking that solicited public comment on reforms to the Child Care and Development Fund (CCDF) program.

DATES: The notice of proposed rulemaking published at 78 FR 29442, May 20, 2013, is withdrawn, effective immediately.

FOR FURTHER INFORMATION CONTACT: Andrew Williams, Director, Office of Child Care Policy Division, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447; 202–401–4795 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 20, 2013, HHS published a notice of proposed rulemaking (NPRM) to the regulations at 45 CFR part 98 for the Child Care and Development Fund (CCDF) program at 78 FR 29442. Subsequently, the Child Care and Development Block Grant Act, which governs the CCDF program, was reauthorized in November 2014 (Public Law 113–186). In light of this statutory change, HHS is hereby withdrawing the May 2013 NPRM, and will begin a new regulatory process with a proposed rule based on the new law.

Dated: April 9, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: April 27, 2015.

Sylvia Matthews Burwell,

Secretary.

[FR Doc. 2015–10351 Filed 5–1–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2005–23151]

RIN 2126–AA95

Qualifications of Drivers; Diabetes Standard

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to permit drivers with stable, well-controlled insulin-treated diabetes mellitus (ITDM) to be qualified to operate commercial motor vehicles (CMVs) in interstate commerce. Currently, drivers with ITDM are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. This NPRM would enable individuals with ITDM to obtain a Medical Examiner's Certificate (MEC), from a medical examiner (ME) at least annually in order to operate in interstate commerce if the treating clinician (TC) who is the healthcare professional responsible for prescribing insulin for the driver's diabetes, provides documentation to the ME that the condition is stable and well-controlled.

DATES: You must submit comments on or before July 6, 2015.

ADDRESSES: You may submit comments identified by docket number FMCSA–2005–23151 using any one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Services (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' heading under the **SUPPLEMENTARY INFORMATION** section below for instructions regarding submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Ms. Linda Phillips, Medical Programs Division, FMCSA, 1200 New Jersey Ave SE., Washington DC 20590–0001, by telephone at 202–366–4001, or by email at *fmcsamedical@dot.gov.* If you have questions about viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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VIII. Rulemaking Analyses and Notices

I. Executive Summary

A. Purpose and Summary of Major Provisions

Under the current regulations, a driver with ITDM may not operate a CMV in interstate commerce unless the driver obtains an exemption from FMCSA, which must be renewed at least every 2 years. FMCSA proposes to allow individuals with well-controlled ITDM to drive CMVs in interstate commerce if they are examined at least annually by an ME who is listed in the National Registry of Certified Medical Examiners (National Registry), have received the MEC from the ME, and are otherwise physically qualified. FMCSA believes that this procedure will adequately

ensure that drivers with ITDM manage the condition so that it is stable and well-controlled, and that such a regulatory provision creates a clearer, equally effective and more consistent framework than a program based entirely on exemptions under 49 U.S.C. 31315(b).

FMCSA evidence reports, ADA studies, and MRB conclusions and recommendations indicate that drivers with ITDM are as safe as other drivers when their condition is well-controlled. In order to determine if a driver with ITDM meets FMCSA's physical qualification standards and is able to obtain a MEC, the driver must be evaluated at least annually by his or her TC. The evaluation by the TC would ensure that the driver is complying with an appropriate standard of care for individuals with ITDM and would allow the TC to monitor for any of the progressive conditions associated with diabetes (*e.g.,* nerve damage to the extremities, diabetic retinopathy, cataracts and hypoglycemia unawareness). The ME must obtain information from the TC to demonstrate the driver's condition is stable and well-controlled.

B. Benefits and Costs

FMCSA believes that this rulemaking would not have a significant economic impact. Compared to other CMV drivers, drivers with ITDM will incur costs for an additional Department of Transportation (DOT) medical examination of $151 annually; however, they will have the ability to earn a living without the inconvenience and added costs of obtaining and maintaining an exemption. The increased monitoring of the driver with ITDM could lead to better driver health while ensuring that the physical condition of CMV drivers enables them to operate CMVs safely. The total annual cost of medically qualifying drivers with ITDM would increase in comparison to the cost of the current exemption program based on a projected increase in the population of drivers who would seek medical certification, as shown in Table 1 below for ITDM drivers:

TABLE 1—TOTAL ANNUAL COSTS

[In millions of $]

	Current exemption program	Proposed rule (100% ITDM-qualified drivers (209,664 drivers) [1]	Proposed rule (66.7% ITDM-qualified drivers (139,846 drivers)	Proposed rule (33.3% ITDM-qualified drivers (69,818 drivers)
Cost of Visits to Endocrinologist ($m)	$0.26	$0.00	$0.00	$0.00
Cost of Annual Exam of Eye Specialist ($m)	0.40	0.00	0.00	0.00
Cost of Issuing Annual Medical Certificates ($m)	0.13	16.35	10.91	5.45
Cost of Applying for Exemption ($m)	0.03	0.00	0.00	0.00
Driver Time Costs of Medical Exams ($m)	0.06	7.55	5.03	2.51
Cost to Government ($m)	0.91	0.00	0.00	0.00
Total Costs ($m)	1.79	23.90	15.94	7.96

As the Agency lacks data to project the affected population changes in subsequent years, the analysis projects this rule's total annual costs to remain constant in real terms during each of the ten years from the initial compliance date. Therefore, for this rule a separate discussion of the *annualized* costs at the 7% discount rate is unnecessary, as the annualized costs are identical to the corresponding discounted annual costs.

II. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. Where possible, we would like you to provide scientific, peer-reviewed data to support your comments. On March 17, 2006, the Agency published an Advance Notice of Proposed Rulemaking (ANPRM) on the diabetes standard (71 FR 13810). In this NPRM, the Agency does not respond to comments submitted in response to the ANPRM. If you believe your previous comments are relevant to today's proposed rule, please reference them in your new comments to the docket FMCSA–2005–23151.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2005–23151), indicate the heading of the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* type the docket number, ''FMCSA–2005–23151'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and click ''Submit.'' If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments and any document mentioned in this preamble, go to *www.regulations.gov,* insert the docket number, ''FMCSA–2005–23151'' in the ''Keyword'' box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET,

[1] ''ITDM-qualified drivers'' are those the Agency believes would qualify under this proposed rule to receive medical examiner's certificates enabling them to operate CMVs in interstate commerce were they to undergo a DOT medical examination. The derivation of the estimated number of ITDM-qualified drivers at the three participation rates evaluated is shown in section 2.4.1 of the regulatory evaluation.

Monday through Friday, except Federal holidays.

C. Privacy Act

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

III. Abbreviations and Acronyms

ADA American Diabetes Association
ANPRM Advance Notice of Proposed Rulemaking
CAA Clean Air Act
CE Categorical Exclusion
CDL Commercial Driver's License
CMV Commercial Motor Vehicle
DOT U.S. Department of Transportation
E.O. Executive Order
FHWA Federal Highway Administration's
FMCSA Federal Motor Carrier Safety Administration
FR **Federal Register**
FMCSRs Federal Motor Carrier Safety Regulations
ICR Information Collection Request
ITDM Insulin-Treated Diabetes Mellitus
LFC Licencia Federal de Conductor
ME Certified Medical Examiner
MEC Medical Examiner's Certificate
MRB Medical Review Board
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PRA Paper Reduction Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SORN System of Records Notice
TEA–21 Transportation Equity Act for the 21st Century
TC Treating Clinician

IV. Legal Basis for the Rulemaking

FMCSA has authority under 49 U.S.C. 31136(a) and 31502(b)—delegated to the Agency by 49 CFR 1.87(f) and (i), respectively—to establish minimum qualifications, including medical and physical qualifications, for CMV drivers operating in interstate commerce. Section 31136(a)(3) requires that the Agency's safety regulations ensure that the physical conditions of CMV drivers enable them to operate their vehicles safely, and that MEs trained in physical and medical examination standards perform the physical examinations required of such operators.

In 2005, Congress authorized the creation of the Medical Review Board (MRB) composed of experts ''in a variety of medical specialties relevant to the driver fitness requirements'' to provide advice and recommendations on qualification standards [49 U.S.C. 31149(a)]. The position of Chief Medical Officer was authorized at the same time [49 U.S.C. 31149(b)]. Under section 31149(c)(1), the Agency, with the advice of the MRB and Chief Medical Officer, is directed to ''establish, review and revise . . . medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' As discussed below in this proposed rule, the Agency, in conjunction with the Chief Medical Officer, asked the MRB to review and report on the current diabetes standard. The Board's recommendations and the Agency's responses are described elsewhere in this NPRM.

In addition to the statutory requirements specific to the physical qualifications of CMV drivers [49 U.S.C. 31136(a)(3)], FMCSA's regulations must also ensure that CMVs are maintained, equipped, loaded and operated safely [49 U.S.C. 31136(a)(1)]; that the responsibilities imposed on CMV drivers do not impair their ability to operate the vehicles safely [49 U.S.C. 31136(a)(2)]; that the operation of CMVs does not have a deleterious effect on the physical condition of the drivers [49 U.S.C. 31136(a)(4)]; and that drivers are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a vehicle in violation of a regulation promulgated under 49 U.S.C. 31136 (which is the basis for much of the FMCSRs), 49 U.S.C. chapter 51 (which authorizes the hazardous materials regulations) or 49 U.S.C. chapter 313 (the authority for the Commercial Driver's License (CDL) regulations and the related drug and alcohol testing requirements) [49 U.S.C. 31136(a)(5)].

This proposed rule is based on 49 U.S.C. 31136(a)(3) and 31149(c), but does not deal with 49 U.S.C. 31136(a)(1), (2), or (4). FMCSA believes that coercion of drivers with ITDM to violate the current rule preventing them from operating in interstate commerce—which is prohibited by 49 U.S.C. 31136(a)(5)—does not and will not occur. On the contrary, motor carriers have generally been reluctant to employ such drivers at all. The Federal Highway Administration's (FHWA) original exemption program in the 1990s and FMCSA's subsequent program under 49 U.S.C. 31315(b) allowed selected individuals with ITDM to drive legally for the first time, while also generating data showing that their safety records were at least as good as those of non-ITDM drivers.

Section 4129 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1742, Aug. 10, 2005], in paragraphs (a) through (c), directed the Agency to relax certain requirements of its exemption program for drivers with ITDM.[2] The last paragraph of section 4129 provides that insulin-treated individuals may not be held by the Secretary to a higher standard of physical qualification in order to operate a commercial motor vehicle in interstate commerce than other individuals applying to operate, or operating, a commercial motor vehicle in interstate commerce; except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations issued by the Secretary.[3]

FMCSA believes that this proposed rule would satisfy the purposes of section 4129(d), by imposing appropriate requirements on such drivers as contemplated by that provision and maintaining current levels of highway safety.

Finally, prior to prescribing any regulations, FMCSA must consider their ''costs and benefits'' [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in the Rulemaking Analyses and Notices section of this NPRM.

V. Background

A. Diabetes

Diabetes is a disorder of metabolism—the way the body uses digested food for growth and energy.[4] The body breaks down most food into glucose. After digestion, glucose passes into the bloodstream, where cells use it for growth and energy. For glucose to enter cells, insulin, a hormone produced by the pancreas, must be present. Normally, the pancreas produces the right amount of insulin automatically to move glucose from blood into the cells. In people with diabetes, however, either the pancreas produces little or no insulin or the cells do not respond appropriately to the insulin that is produced. Glucose builds up in the blood, overflows into the urine, and passes out of the body in the urine. Thus, the body loses its main source of fuel although the blood contains large

[2] The exemption requirements were changed in a notice issued November 8, 2005 (70 FR 67777).

[3] See *http://www.gpo.gov/fdsys/pkg/STATUTE-119/pdf/STATUTE-119-Pg1144.pdf* (pages 599–600 of the 835 page PDF).

[4] See the source document for this discussion at *http://diabetes.niddk.nih.gov/dm/pubs/overview/DiabetesOverview_508.pdf.*

amounts of glucose. The excess glucose in the blood (called hyperglycemia) plays an important role in disease-related complications.

Type 1 diabetes is an autoimmune disease in which the immune system attacks and destroys the insulin-producing cells in the pancreas. The pancreas then produces little or no insulin. A person who has Type 1 diabetes must take insulin daily to live. Type 1 diabetes accounts for about 5 percent of all diagnosed cases of diabetes in the United States and is usually diagnosed in children and young adults.

In Type 2 diabetes, the pancreas is usually producing enough insulin, but the body cannot use the insulin effectively, a condition called insulin resistance. After several years, insulin production decreases. The result is the same as for Type 1 diabetes—glucose builds up in the blood and the body cannot make efficient use of its main source of fuel. Type 2 diabetes can be treated through diet, with insulin, or with medications other than insulin. The prevalence of Type 2 diabetes increases with age. Type 2 diabetes accounts for about 95 percent of diagnosed diabetes in adults in the United States.

Over time, people with the disease have a heightened potential of developing other problematic medical conditions. These conditions include proliferative diabetic retinopathy,[5] cataracts and glaucoma, high blood pressure and other cardiovascular problems, kidney disease, and circulation issues for the extremities, which can cause numbness and decreased functionality, particularly with feet and legs.

Of particular concern for drivers, however, are the immediate symptoms of severe hypoglycemia—a condition where insulin treatment may cause blood glucose to drop to a dangerously low concentration.[6] A person experiencing hypoglycemia may have one or more of the following symptoms: Double vision or blurry vision; shaking or trembling; tiredness or weakness; unclear thinking; fainting; seizures; or coma.[7] If any of these symptoms of severe hypoglycemia occurs while someone is driving, there is the potential for a crash.

Some people with blood glucose readings at concentrations below optimal levels perceive no symptoms and no early warning signs of low blood glucose—a condition called hypoglycemia unawareness. This condition occurs most often in people with Type 1 diabetes, but it can occur in people with Type 2 diabetes. Note, however, that impairments associated with diabetes mellitus can be abated through proper disease management and monitoring to stabilize and control the condition.

B. Brief History of Physical Qualification Standards for CMV Drivers With ITDM[8]

From 1940 until 1971, one of FMCSA's predecessors recommended that CMV drivers have urine glucose tests as part of medical examinations for determining whether persons are physically qualified to drive CMVs in interstate or foreign commerce (4 FR 2294, June 7, 1939, effective date January 1, 1940). In 1971, FHWA, FMCSA's predecessor agency, established the current standard for drivers with ITDM (35 FR 6458, April 22, 1970, effective date January 1, 1971), which includes testing urine for glucose. That standard states that a ''person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.'' 49 CFR 391.41(b)(3). However, beginning in 1993, CMV drivers with ITDM had the opportunity to apply to FHWA for a waiver until a 1994 Federal court decision invalidated the waiver program.

In 1998, section 4018 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 413–4 (TEA–21) (set out as a note to 49 U.S.C. 31305) directed the Secretary to determine the feasibility of developing ''a practicable and cost-effective screening, operating and monitoring protocol'' for allowing drivers with ITDM to operate CMVs in interstate commerce. This protocol ''would ensure a level of safety equal to or greater than that achieved with the current prohibition on individuals with insulin treated diabetes mellitus driving such vehicles.''

As directed by section 4018, FHWA compiled and evaluated the available research and information. It assembled a panel of medical experts in the treatment of diabetes to investigate and report about the issues concerned with the treatment, medical screening, and monitoring of ITDM individuals in the context of operating CMVs. In July 2000, FMCSA[9] submitted a report to Congress titled, ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century'' (TEA–21 Report to Congress).[10] This Report to Congress concluded that it was feasible to establish a safe and practicable protocol containing three components allowing some drivers with ITDM to operate CMVs. The three components were: (1) Screening of qualified ITDM commercial drivers, (2) establishing operational requirements to ensure proper disease management by such drivers, and (3) monitoring safe driving behavior and proper disease management.

On July 31, 2001, because of the conclusions found in the TEA–21 Report to Congress, FMCSA published a notice proposing to issue exemptions from the FMCSRs allowing drivers with ITDM to operate CMVs in interstate commerce. 66 FR 39548. After receiving and considering comments, FMCSA issued a Notice of Final Disposition (''2003 Notice'') establishing the procedures and protocols for implementing the exemptions for drivers with ITDM. 68 FR 52441 (Sept. 3, 2003). So beginning again in 2003, CMV drivers with ITDM could apply to FMCSA for an exemption from this prohibition.

To obtain an exemption, a CMV driver with ITDM had to meet the specific conditions and comply with the requirements set out in the final disposition. The driver had to follow the application process set out in 49 CFR part 381, subpart C, and FMCSA could not grant an exemption unless a level of safety equivalent to, or greater than, the level achieved without the exemption

[5] Between 40 and 45 percent of Americans diagnosed with diabetes have some stage of diabetic retinopathy. The four stages of diabetic retinopathy, from mild, non-proliferative to proliferative, are described by the National Eye Institute, National Institutes of Health at: *http://www.nei.nih.gov/health/diabetic/retinopathy.asp.* Web site accessed on March 20, 2015.

[6] According to the ADA Web site, ''Hypoglycemia is a condition characterized by abnormally low blood glucose (blood sugar) levels, usually less than 70 mg/dl.'' *http://www.diabetes.org/living-with-diabetes/treatment-and-care/blood-glucose-control/hypoglycemia-low-blood.html.* Web site accessed on March 20, 2015.

[7] *http://www.nlm.nih.gov/medlineplus/ency/article/000386.htm.* Web site accessed on March 20, 2015.

[8] A more complete history of the Federal regulation of drivers with ITDM is available in the ANPRM published March 17, 2006 (71 FR 13802), which readers can find in the docket for this rulemaking.

[9] The motor carrier regulatory functions of the FHWA were transferred to FMCSA in the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748, Dec. 9, 1999.

[10] The TEA–21 Report to Congress can be accessed in the docket for this rulemaking. For a detailed discussion of the report's findings and conclusions, see 66 FR 39548 (July 31, 2001).

would be maintained. 49 U.S.C. 31315 and 49 CFR 381.305(a).

In conformity with the conclusions of the TEA–21 Report to Congress, the 2003 Notice implemented the three protocol components recommended in the report, with a few modifications.

C. Current Exemption Program

FMCSA administers an exemption program for individuals with ITDM who wish to become qualified or maintain their physical qualifications as CMV drivers. The Agency administers this exemption program under 49 CFR part 381 subpart C according to directives in notices of disposition published in 2003 (68 FR 52441, Sept. 3, 2003) and 2005 (70 FR 67777, Nov. 8, 2005).

To apply for an exemption under the current program administered by FMCSA, the driver must submit a letter application with medical documentation showing the following: [11]

(1) The driver has been examined by a board-certified or board-eligible endocrinologist who has conducted a comprehensive evaluation including (i) one measure of glycosylated hemoglobin within a range of ≥7 percent and ≤10 percent, and (ii) a signed statement regarding the doctor's determinations;

(2) The driver has obtained a signed statement from an ophthalmologist or optometrist that the driver has been examined, has no unstable proliferative diabetic retinopathy, and meets the vision standard in § 391.41(b)(10); and

(3) The driver has obtained a signed copy of an ME's Medical Evaluation Report and of a Medical Examiner's Certificate issued showing that the driver meets all other standards in § 391.41(b).

FMCSA does not conduct exams of any of the drivers in the exemption program. We accept the paperwork from the MEs and the TCs and make our decision based on the paperwork. To maintain the exemption, the driver must meet certain conditions, which include the following:

(1) Yearly medical re-certification by an ME;

(2) Quarterly reports submitted by an endocrinologist to FMCSA including blood glucose logs, insulin regimen changes and hypoglycemic events, if any, that the driver has experienced;

(3) Annual comprehensive medical evaluation by an endocrinologist;

(4) An annual vision evaluation confirming no evidence of unstable proliferative diabetic retinopathy and meeting the vision standard for CMV drivers;

(5) Maintaining appropriate medical supplies for glucose management, including a monitor, insulin, and an amount of rapidly absorbable glucose in the vehicle to be used as necessary;

(6) Following a protocol to monitor and maintain blood glucose levels; and

(7) Reporting all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes, and any involvement in a crash or adverse event to the Agency.

According to the annual report for the diabetes exemption program, FMCSA received 858 applications in 2012, continuing the growth trend of the preceding six years.[12] Before granting a request for an exemption, FMCSA must publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the Agency and to comment on the request. The notice also must identify the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. In addition, the Agency must monitor the implementation of each exemption to ensure compliance with its terms and conditions.

After the comment period, as part of the approval process, FMCSA must publish a notice of its decision to approve or deny the request. A driver must reapply for an exemption every 2 years. However, FMCSA may revoke an exemption immediately under standards set out in § 381.330.

Should this proposal become a final rule, CMV drivers with ITDM could meet physical qualification standards under the new rule without applying for or receiving exemptions.

VI. Reasons for the Proposed Changes

This section of the preamble is divided into two major subsections. The first section discusses data reflected in evidence reports and American Diabetes Association (ADA) studies examining risks associated with diabetes and driving in general, and the association between hypoglycemia and ITDM in particular. It also discusses MRB findings and conclusions based on evidence reports. The second section explains why FMCSA is proposing to eliminate the exemption program and establish a medical qualification standard for drivers with ITDM, including relating the proposed rule elements to the current exemption program, MRB recommendations, and findings from the ADA studies.

A. Expert Guidance and Studies

Medical Review Board Guidance

FMCSA uses an evidence-based systematic review process and consultation with the MRB and the Chief Medical Officer to revise or develop medical standards and guidelines for commercial drivers. In its deliberations concerning commercial drivers with ITDM, the MRB reviewed the analysis of a 2006 evidence-based report and a 2010 update of that report.[13] Both reports focused primarily on the risks to driver safety from the acute risks associated with diabetes mellitus (*e.g.,* hypoglycemia), but did not address driver safety issues related to chronic complications of diabetes (*e.g.,* diabetic nephropathy, neuropathy, retinopathy, and/or cardiovascular conditions resulting from the long-term complications of diabetes). Both the evidence reports and ADA studies, discussed in the next section, show that hypoglycemia is the chief safety concern for drivers with the disease. Further, the 2010 Update studies show use of insulin, a long duration on insulin, and impaired hypoglycemic awareness as among the factors ''repeatedly shown to be associated with an increased incidence of severe hypoglycemia.'' [14]

After considering the findings in the evidence-based reports, the MRB members agreed unanimously that hypoglycemia among individuals with diabetes mellitus is an important risk factor for motor vehicle crashes and approved a set of recommendations to FMCSA for CMV drivers with diabetes mellitus intended to reduce the likelihood of their operating when impaired by hypoglycemic conditions. The MRB recommended that FMCSA allow individuals with ITDM to drive CMVs if they are free of severe hypoglycemic reactions, have no altered mental status or unawareness of hypoglycemia, and manage their diabetes mellitus properly to keep blood sugar levels in the appropriate ranges. The MRB also recommended that all

[11] This list of requirements to apply for and maintain an ITDM exemption is not inclusive.

[12] Annual Report for the FMCSA Diabetes Exemption Program, December 31, 2012.

[13] The 2006 ITDM evidence report is Tregear, SJ, Rizzo M, Tiller M, et al., ''Evidence Report: Diabetes and Commercial Motor Vehicle Driver Safety,'' September 8, 2006. Accessed on May 20, 2015, at: *http://ntl.bts.gov/lib/30000/30100/30117/Final_Diabetes_Evidence_Report.pdf.* The 2010 update report is Bieber-Tregear, M.; Funmilayo, D; Amana, A.; Connor, D; Tregear, S.; and Tiller, M., ''Evidence Report: 2010 Update: Diabetes and Commercial Motor Vehicle Driver Safety,'' May 27, 2011. Accessed on May 20, 2015, at *http://ntl.bts.gov/lib/39000/39400/39416/2010_Diabetes_Update_Final_May_27_2011.pdf,* (2010 Update).

[14] 2010 Update Page 10.

drivers diagnosed with diabetes mellitus be required to obtain at least annual recertification by a ME who is a licensed physician, regardless of whether they are insulin-treated. However, the MRB recommended maintaining a restriction on medical qualification of drivers with ITDM from passenger and hazardous materials transportation.

American Diabetes Association Position Paper

In a 2012 peer-reviewed position paper titled, ''Diabetes and Driving,'' the ADA provided ''an overview of existing (drivers) licensing rules for people with diabetes, address[ing] the factors that impact driving for this population, and identify[ing] general guidelines for assessing driver fitness and determining appropriate licensing restrictions.'' [15] At the end of the paper, ADA set out recommendations for identifying and evaluating diabetes in drivers.[16] Although the ADA addressed these issues in discussing fitness for non-CMV drivers with diabetes, the same disease-related conditions that present driving concerns in the non-CMV driving population create those same concerns in the CMV driving population. ADA begins by stating, ''[M]ost people with diabetes safely operate motor vehicles without creating any meaningful risk of injury to themselves or others.'' [17] Summarizing several studies on understanding diabetes and driving, the paper notes inconsistent findings relative to which drivers with diabetes are at higher risk of crashes. However, the paper notes that according to the studies, ''The single most significant factor associated with driving collisions for drivers with diabetes appears to be a recent history of severe hypoglycemia,[18] regardless of the type of diabetes or the treatment used.'' [19] The paper further references studies finding that even moderate hypoglycemia ''significantly and consistently impairs driving safely and judgment as to whether to continue to drive or self-treat under such metabolic conditions.'' [20]

In evaluating fitness for drivers with diabetes, the ADA paper underscores the importance of individualized assessments ''based not solely on diagnosis of diabetes but rather on concrete evidence of actual risk.'' [21] According to the ADA paper, such an assessment ''must include an assessment by the treating physician or other diabetes specialist who can review recent diabetes history'' as these health care providers are ''the best source of information concerning the driver's diabetes management and history.'' [22] Among other things, the ADA paper recommends physicians provide the following information to licensing authorities: (1) The driver's risk of severe hypoglycemia; (2) the driver's ability to recognize imminent hypoglycemia and take appropriate corrective action; and (3) the driver's ability to provide evidence of sufficient self-monitoring of blood glucose. Appropriate screening inquiries related to driver fitness include ''whether the driver has, within the past 12 months, lost consciousness due to hypoglycemia, experienced hypoglycemia that required intervention from another person to treat or that interfered with driving, or experienced hypoglycemia that developed without warning.'' [23]

The ADA's summary of findings concerning the risks of driving and diabetes concludes that, ''[M]ost people with diabetes safely operate motor vehicles without creating any meaningful risk of injury to themselves or others.'' [24] This statement also reflects FMCSA's conclusion based on the available evidence.

B. What FMCSA is Proposing and Why

In accordance with section 4129(d) of SAFETEA–LU referenced earlier in the Legal Basis section of the preamble, FMCSA may not adopt higher physical qualification standards for drivers with ITDM ''except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary.'' As noted above, CMV drivers with diabetes whose condition is stable and well-controlled do not pose an unreasonable risk to their health or to public safety. Also, as noted, studies indicate that hypoglycemia is the chief safety concern for drivers with diabetes, and the evidence reports show a connection between insulin use and the risk of hypoglycemia. FMCSA has determined that the inconvenience and expense for drivers, and the administrative burden of an exemption program are no longer necessary to address concerns of hypoglycemia and meet the statutory requirement that drivers with ITDM maintain a physical condition that ''is adequate to enable them to operate (CMVs) safely.'' 49 U.S.C. 31136(a)(3). The principal reason for codifying medical qualification standards for ITDM drivers is to eliminate the prohibition on physically qualifying these drivers, thereby promoting their ability to earn a living without the inconvenience and added costs of obtaining and maintaining an exemption. As stated above, evidence indicates that these drivers are reasonably safe to drive if their diabetes is stable and well-controlled.

In this proposed rule, FMCSA would address hypoglycemia as a driver health and operational safety risk by establishing a regulatory protocol to ensure proper disease monitoring and management for drivers using insulin. The Agency is proposing to allow drivers with ITDM to be medically qualified. As a result, the exemption program established in the 2003 and 2005 notices would be unnecessary, and the notices would be withdrawn when this final rule becomes effective. These actions are consistent with the MRB recommendations. Further, this rulemaking would allow healthcare professionals familiar with a driver's physical condition to communicate directly with each other, appropriately ensuring that the MEs have the information necessary to complete the certificate attesting to the driver's medical qualifications. The practice of medical certification through MEs is more efficient and is reflective of congressional intent to have MEs on the National Registry make an individualized assessment of a particular driver's health status and ability to operate a CMV safely.

Contrary to the MRB recommendations, the Agency is not proposing to prohibit drivers with ITDM from being medically qualified to operate CMVs carrying passengers and hazardous materials. The risk posed by a driver with stable, well-controlled ITDM is very low in general. Further, there is no available evidence to support such a prohibition, and, as noted, under section 4129 of SAFETEA–LU, FMCSA may not hold drivers with ITDM ''to a higher standard of physical qualification . . . than other individuals . . . except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under

[15] ADA, ''Diabetes and Driving,'' *Diabetes Care,* vol. 35, supplement 1, January 2012, pp. S81–S85, at S81. Accessed March 20, 2015, from: *http://care.diabetesjournals.org/content/35/Supplement_1/S81.full.pdf+html.*

[16] Id. at S83-S85.

[17] Id. at S81.

[18] Id. at S82 (''The American Diabetes Association Workgroup on Hypoglycemia defined severe hypoglycemia as low blood glucose resulting in neuroglycopenia that disrupts cognitive motor function and requires the assistance of another to actively administer carbohydrate, glucagon, or other resuscitative actions.'').'' Reference omitted.

[19] Id. At page 84, the paper states, ''[R]ecurrent episodes of severe hypoglycemia, defined as two or more episodes in a year, may indicate that a person is not able to safely operate a motor vehicle.''

[20] Id. References omitted.

[21] Id. at S83.

[22] Id.

[23] Id.

[24] Id. at S81.

regulations.'' In addition, the current exemption program permits these drivers to qualify for passenger carrying and hazardous materials transportation. The Agency requests public comment specifically on this point, however.

In addition, FMCSA is not proposing to adopt the MRB recommendation to require annual or more frequent medical recertification for all drivers with diabetes mellitus. The proposed requirements apply only to drivers with ITDM. Current regulations do not prohibit any drivers with non-insulin treated diabetes mellitus from being qualified medically to operate CMVs. Finding no medical necessity for such a prohibition, the Agency is not proposing such a change. Furthermore, although the MRB recommended evaluation by a licensed physician, the Agency believes the TC working in conjunction with the ME, who is certified by the National Registry and working within the regulatory framework under part 391, meets the statutory requirement under 49 U.S.C. 31136(a)(3) for periodic physical examinations of drivers. The Agency seeks comment on these issues.

Today's proposed rule would amend 49 CFR part 391 by revising §§ 391.41 and 391.45 and by adding new § 391.46 to address driver health and public safety concerns associated with hypoglycemia related to diabetes and its control through insulin. The elements of the proposed rule are limited and medically necessary under section 4129(d) of SAFETEA–LU, ensure that the physical condition of drivers with ITDM is adequate to enable them to operate CMVs safely as required by 49 U.S.C. 31136(a)(3), and align with current best medical practice standards for monitoring and managing ITDM. In brief, the Agency proposes the following elements:

A driver with ITDM must have an annual or more frequent evaluation by a TC prior to a DOT medical examination by a certified ME. This proposed requirement is consistent with the MRB recommendations, except that the MRB recommended application to all drivers with diabetes mellitus. For the reason stated above, FMCSA is proposing this requirement only for drivers with ITDM.

The driver must keep blood glucose records as determined by the TC and submit those records to his or her TC at the evaluation. This proposed requirement is consistent with the MRB recommendation that drivers with ITDM monitor blood glucose levels and submit logs as part of their annual evaluation.

The ME must obtain written notification from the driver's TC, who has determined whether, in the preceding 12 months, the driver had a severe hypoglycemic reaction or demonstrated hypoglycemic unawareness and monitored and managed the condition properly as evidenced by blood glucose records. This proposed requirement is consistent with the MRB recommendation that drivers with ITDM be free of severe hypoglycemia and hypoglycemia unawareness, and that these drivers properly monitor and manage the condition.

At least annually, an ME, listed on the National Registry, must examine and certify that the driver is free of complications that would impair the driver's ability to operate a CMV safely and only renew the medical certificate for up to 1 year. This proposed requirement is consistent with the MRB recommendation for annual or more frequent recertification. For the reason stated above, FMCSA is proposing this requirement only for drivers with ITDM.

In contrast with the current exemption program, the proposed rule would require an annual evaluation by a TC instead of an evaluation by an endocrinologist and an annual or more frequent DOT medical examination by a certified ME to determine if medical certification is warranted. Evaluation by a TC allows for the individualized assessment of drivers with ITDM, which is consistent with the recommendations of the ADA and other organizations concerned with diagnosis and treatment of the disease. Most importantly, under section 4129(a) of SAFETEA–LU, Congress expressly directed FMCSA to modify the exemption program to ''provide for the individual assessment of applicants who use insulin to treat their diabetes and who are, except for their use of insulin, otherwise qualified under the [FMCSRs].'' FMCSA believes that a similar provision for an individual assessment is also appropriate in this rule. Further, although the ADA, the U.S. National Institutes of Health, and other organizations urge yearly assessments for individuals with diabetes by a physician or health care professional knowledgeable about the disease, none of these groups calls for yearly evaluations by endocrinologists. The National Institute of Diabetes and Digestive and Kidney Diseases notes that most people with diabetes receive care from a primary care physician—generally an internist or family practice doctor. Indeed, a requirement to be evaluated by an endocrinologist now seems impracticable for most drivers with ITDM. According to the American Board of Internal Medicine, there are only about 5,300 board-certified endocrinologists in the United States, approximately 1,300 of which do not provide clinical care.[25]

Reasonable persons with ITDM have every incentive to manage their condition so that the disease is stable and well-controlled, because the failure to take care of themselves not only would affect the quality of life, but also would significantly increase the risk of a hypoglycemic event. For a CMV driver, this situation would result in the inability to renew the required medical certificate and to earn an income through driving a CMV.

If a driver who has not used insulin previously begins using insulin for control of diabetes mellitus, the driver would be required to have an examination by a TC prior to the required DOT medical examination by a certified ME . The ME would use medical information from the TC in conjunction with the medical certification examination to determine whether a driver new to insulin treatment qualifies for medical certification. Essentially, in issuing a MEC under FMCSA regulations, the ME will reflect his or her evaluation that such drivers are free of complications that might impair the ability to operate a CMV safely in interstate commerce.

For all drivers with ITDM, the annual visit with the TC would ensure that a driver is complying with an appropriate standard of care for individuals with that condition, and it would allow the TC to monitor any of the other progressive conditions associated with diabetes. Although the proposed rule has no requirement for hypoglycemia awareness training, the annual or more frequent ME certification exam provides an opportunity for intervention should the TC evaluation, and the ME's own examination, provide evidence of hypoglycemia unawareness that impairs safe driving. The ME will request that the TC provide written notification regarding the ITDM driver's disease management prior to the examination of the driver.

The annual or more frequent requirement for a new MEC aligns with the current interval specified under the directives in the notices of final disposition and with the interval specified for drivers with ITDM by the Canadian Council of Motor Transport Administrators. The determination of whether a driver with ITDM is eligible to receive a MEC would rest with the ME who, working under part 391 with information provided by the TC, is

[25] *http://thyroid.about.com/od/findlearnfromdoctors/a/endo-shortage.htm.* Accessed on March 20, 2015.

authorized by statute to conduct DOT medical examinations.

The proposed rule would not change the requirement under 49 CFR 392.3 for every CMV driver, including those with ITDM, to refrain from operating a CMV while the driver's ability or alertness is impaired in a way that would compromise safety. The driver's knowledge of the issues surrounding ITDM, appropriate monitoring protocols, and equipment and supplies are still very important. The proposed rule would not allow drivers with ITDM with licenses issued in Canada or Mexico to operate a CMV in the United States. Drivers from Mexico with a Licencia Federal de Conductor (LFC) generally may operate in the United States. 49 CFR 383.23(b), n. 1 and 391.41(a)(1)(i). But Mexico does not issue an LFC to any driver with diabetes. Under the terms of the 1998 reciprocity agreement with Canada, a Canadian driver with ITDM holding a license issued by a Canadian province is not authorized to operate a CMV in the United States.

In 1994, at the termination of the ITDM waiver program described in the Background section of this NPRM, FHWA allowed drivers holding waivers to continue to operate CMVs in interstate commerce under the grandfather provisions of 49 CFR 391.64. The requirements in proposed § 391.46 reflect limited and necessary diabetes monitoring and management practices based on the results of the ADA studies and the evidence reports. On the other hand, under the current requirements in § 391.64, a driver with ITDM must continue to receive an annual endocrinologist examination, carry an absorbable source of glucose, and meet other requirements that FMCSA has determined are impracticable or unenforceable. If the requirements proposed today are adopted, the Agency believes that grandfathering provisions may be redundant because the individuals with waivers would comply already with the necessary elements of § 391.64 (*e.g.,* otherwise qualifying under § 391.41 and annual examination by an ME), or would be able to meet a less restrictive requirement (*e.g.,* annual examination by a TC rather than a board-certified endocrinologist). However, FMCSA seeks comments regarding whether removing these grandfathering provisions would adversely affect any driver that is operating currently under § 391.64.

The current exemption program requires drivers with ITDM to obtain a signed statement from an ophthalmologist or optometrist that the applicant has been examined, meets the vision standard in § 391.41(b) or has an exemption, and does not have diabetic retinopathy. If the applicant has diabetic retinopathy, he or she must be tested by an ophthalmologist to determine whether the condition is unstable and proliferative. Following that exam, the applicant must submit a separate signed statement from the ophthalmologist certifying that the applicant's diabetic retinopathy is not unstable or proliferative.

The proposed rule would not require drivers with ITDM to be examined or obtain a signed statement from an ophthalmologist or optometrist to meet the vision standard or a separate examination for diabetic retinopathy. As stated above, FMCSA believes that reasonable persons with ITDM have every incentive to manage their condition so that the disease is stable and well-controlled, because the failure to care for themselves would affect their quality of life. This includes examinations by an optometrist or ophthalmologist to assess the individual's long term visual health. The regulatory concern for any driver is whether he or she can meet the standards in § 391.41(b)(10). FMCSA believes that meeting the vision acuity standard as part of the annual exam by an ME listed in the National Registry of Certified Medical Examiners provides reasonable certainty of discovering and mitigating risks associated with any safety-related condition that would interfere with meeting the standard, including diabetic retinopathy. This approach also would be less costly for drivers who would incur the cost of seeing a vision specialist only if there are signs of a degenerative condition, in contrast to the exemption program requirement that these drivers must see an optometrist or ophthalmologist to meet visual acuity requirements under § 391.41(b). The Agency requests comment on the need for a person with ITDM to be examined by an optometrist or ophthalmologist as a condition of passing the physical exam.

VII. Section-By-Section Analysis

This NPRM addresses the physical qualification standards for interstate CMV drivers treating their diabetes mellitus with insulin. This section-by-section analysis describes the proposed provisions in numerical order.

Section 391.41 Physical Qualifications for Drivers

Section 391.41 would be amended to allow drivers treating diabetes mellitus with insulin to operate commercial motor vehicles in interstate commerce provided they meet the conditions specified in the new § 391.46. Paragraph (b)(3) would be revised to allow a person to meet the physical qualification standards to operate a commercial motor vehicle either by (1) having no medical history or diagnosis of diabetes mellitus requiring insulin for control or (2) meeting the requirements in new § 391.46.

Section 391.45 Persons Who Must Be Medically Examined and Certified

Section 391.45 would be revised to renumber the section for clarity. Existing paragraph (b)(1) would become new paragraph (b), requiring any driver who has not been medically examined and certified as qualified to operate a CMV during the preceding 24 months, unless the driver is required to be examined and certified in accordance with paragraphs (c), (d), (e) or (f) of this section. Existing paragraph (b)(2) would be divided into new paragraphs (c) and (d). Existing paragraph (c) would become new paragraph (f). New paragraph (e) would require any driver who has diabetes mellitus requiring insulin for control and who has been qualified for a MEC under the standards in § 391.46 to be medically examined and certified as qualified to drive at least every 12 months.

Section 391.46 Physical Qualification Standards for a Person With Insulin-Treated Diabetes Mellitus

A new § 391.46 would be added containing the requirements that a person who has diabetes mellitus currently requiring insulin for control must meet to be physically qualified to drive a CMV in accordance with specific standards for such drivers.

Proposed paragraph (a) would require that a person with diabetes mellitus requiring insulin for control is physically qualified to operate a CMV in interstate commerce if he or she otherwise meets the standards in § 391.41 and also meets the requirements in paragraphs (b) and (c) of proposed § 391.46.

Paragraph (b) would require the person with diabetes mellitus currently requiring insulin for control to have an evaluation by his or her TC who would determine that the driver had not experienced a recent severe hypoglycemic reaction and was properly managing the disease. A definition of TC would be added to the provision. Paragraph (b) also would require a person with diabetes mellitus requiring insulin for control to be medically examined and certified under § 391.43 by an ME. These examinations would occur at least annually. The ME

must obtain and review written notification from the TC that the person is properly managing the diabetes mellitus. Paragraph (c) would require that the medically certified driver with ITDM maintain his or her blood glucose records per the guidance of the TC for the period of certification and submit those records to the TC at the time of the evaluation.

VIII. Rulemaking Analyses and Notices

A. Regulatory Planning and Review (Executive Order (E.O.) 12866) and DOT Regulatory Policies and Procedures

Under E.O. 12866, ''Regulatory Planning and Review'' (issued September 30, 1993, published October 4 at 58 FR 51735, as supplemented by E.O. 13563 and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review. E.O. 12866 defines ''significant regulatory action'' as one likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA determined this proposed rule is not a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, and not significant under DOT regulatory policies and procedures. The Agency estimates that the economic impact of this proposed rule will not exceed the annual $100 million threshold for economic significance.

This Regulatory Impact Analysis (RIA) provides an assessment of the costs and benefits of the Qualifications of Drivers: Diabetes NPRM. FMCSA proposes to allow the operation of CMVs in interstate commerce by drivers with well-controlled ITDM whose physical condition allows them to operate safely. Under current medical qualifications requirements an insulin-dependent driver does not meet the qualifications of § 391.41(b)(3) to receive a MEC to operate CMVs in interstate commerce. However, FMCSA may grant the driver with stable, well-controlled ITDM an exemption to drive in interstate commerce under the procedures in 49 CFR part 381 and the protocols in the 2003 Notice of Final Disposition as updated in 2005.[26]

The proposed rule would change the physical qualification standards to allow the ME to qualify drivers with stable, well-controlled ITDM to operate CMVs in interstate commerce. FMCSA has evaluated the costs and benefits of the proposed rule using the current exemption program as a baseline for comparison. The proposed rule and the exemption program differ on key provisions that affect costs, which are summarized below.

TABLE 2—COMPARISON OF CURRENT EXEMPTION PROGRAM AND PROPOSED RULE

Current exemption program	Proposed rule
Annual exam by ME	Annual exam by ME.
Renewable exemption granted by FMCSA for up to every 2 years	No exemption needed.
Annual exam by eye specialist for evidence of diabetic retinopathy	No annual exam by eye specialist required in regulations.
Annual evaluation by board-certified endocrinologist	Annual evaluation by TC.
Submit quarterly reports from board-certified endocrinologist	No report required.

The majority of CMV drivers receive MECs that are valid for two years. The proposed rule would require drivers with ITDM to obtain MECs at least annually as currently required by the exemption program. However these drivers would no longer be required to obtain an exemption from FMCSA. A driver with stable, well-controlled ITDM who meets the requirements of the proposed rule could obtain a MEC and continue to earn income operating CMVs in interstate commerce without the additional expense and delay of applying for an exemption.

Not all drivers who seek to be medically certified under the standards described in this proposed rule would be medically qualified to operate a CMV, however estimating the number of drivers who would join the driver population is difficult. As a result the Agency has performed a threshold analysis using various percentages of ITDM-medically qualified drivers to determine possible costs of the rule annually in millions of dollars. Further information on this analysis may be found in the RIA in the docket.

In this analysis, we provide cost estimates if the estimated rates of ITDM-qualified driver populations are: 33.3%, 66.7%, and 100%. The Agency has no estimate of the actual rate of ITDM-qualified drivers certified under the qualifications proposed here and feels that 33.3%, 66.7%, and 100% acceptance rates allow the reader to understand the range of possible impacts of the rule. This has no impact on the rule's cost per driver which will be discussed shortly.

The proposed rule is less onerous for both drivers with ITDM and for the Agency. The Agency would change the requirement from an annual evaluation by a board-certified endocrinologist to one with a TC because the treating licensed healthcare professional is capable of determining whether the driver's condition is well-controlled. The revised requirement also would eliminate quarterly reports from the board-certified endocrinologist, the sharing of information between the ME on the National Registry and the TC would ensure that only drivers who are controlling their ITDM would receive a 1-year medical certificate. The Agency would no longer review applications for exemptions, further reducing administrative costs for FMCSA. The rule would eliminate an annual eye exam, because a qualified ME on the Agency's National Registry could determine whether the driver meets the vision standard. For these reasons, the per-driver cost would be significantly lower under the proposed rule than under the current exemption program.

The table below compares costs of the current exemption program with projected costs of the proposed rule. As the Agency lacks sufficient data to project the affected population changes

[26] 68 FR 52441 and 70 FR 67777.

in subsequent years, the analysis projects this rule's total annual costs to remain constant in real terms during each of the ten years from the initial compliance date. A separate discussion of the *annualized* costs at the 7% discount rate for this rule is therefore unnecessary, as the annualized costs are identical to the corresponding discounted annual costs. The Agency seeks comments on the use and appropriateness of these ranges in the absence of additional data on the prevalence of ITDM-qualified drivers and their likelihood of participating in the proposal's certification program.

TABLE 3—TOTAL ANNUAL COSTS

[In millions of $]

	Current exemption program	Proposed rule (100% IDTM-qualified drivers [27]—209,664 drivers)	Proposed rule (66.7% ITDM-qualified drivers—139,846 drivers)	Proposed rule (33.3% ITDM-qualified drivers—69,818 drivers)
Cost of Endocrinology Visits ($m)	$0.26	$0.00	$0.00	$0.00
Cost of Annual Exam of Eye Specialist ($m)	0.40	0.00	0.00	0.00
Cost of Issuing Annual Medical Certificates ($m)	0.13	16.35	10.91	5.45
Cost of Applying for Exemption ($m)	0.03	0.00	0.00	0.00
Driver Time Costs of Medical Exams ($m)	0.0	7.55	5.03	2.51
Cost to Government ($m)	0.91	0.00	0.00	0.00
Total Costs ($m)	1.79	23.90	15.94	7.96

On a per-driver basis, the annual cost impact of this rule is consistent across all ITDM-qualified drivers. These costs include a driver's cost of time related to the DOT medical examination ($31 per hour) and a driver's expense for the out-of-cycle DOT medical examination ($120). Combined, the out-of-pocket cost per ITDM-qualified driver resulting from this proposal is $151 (= $31 + $120). If an ITDM-qualified driver presently participates in the medical exemption program, although he or she will still incur the annual $151 cost of this proposal, this driver will experience a significant cost reduction relative to the cost to participate in the current exemption program, discussed further in the RIA.

In addition to examining published literature on the safety risk of drivers with diabetes, the Agency has also examined the safety performance of drivers holding diabetes exemptions.

TABLE 4—DIABETES EXEMPTION ANALYSIS RESULTS

	Fatal crashes	Fatalities	Injury crashes	Injuries	Tow away crashes	Total crashes
Pre-Exemption Period	16	24	108	171	193	317
Exemption-Period	0	0	22	31	52	74
Post-Exemption Period	3	4	16	22	22	41
Total	19	28	146	224	267	432

Source: December 14, 2012 MCMIS snapshot.

The table above titled ''Diabetes Exemption Analysis Results'' summarizes the crash performance of 1,730 drivers in the Diabetes Exemption Program. Crash statistics for the pre-exemption career and (if any) post-exemption career [28] of the drivers are presented, but the primary periods of interest are the months and years during which a driver was granted an exemption. As can be seen, as a whole, drivers in the exemption program were involved in 74 crashes, none of them fatal.

This record of crash history can be compared against the crash performance of drivers as a whole. Because one can examine MCMIS reported crashes only for drivers in the exemption program, the analysis of the safety performance of drivers as a whole is restricted to MCMIS reported crashes. The Agency lacks data on vehicle miles traveled for drivers in the exemption program, however, and the best indication of exposure is therefore years of driving.

The exemption program provides data on when an exemption was granted, renewed, rescinded, or terminated. These data allow one to determine, for each exemption holder, approximately how many months and years each driver operated a CMV while holding an exemption. FMCSA was able to analyze data for 1,730 drivers involved in 74 crashes. Some drivers could not be analyzed because of missing data. (They had a termination date but no acceptance date, they could not be matched to a driver's license record, or some other data problem made it impossible to calculate the number of years they had been driving or to match their exemption to a crash record.) The 1,730 drivers had an average of 3.293 years of driving experience in the exemption program. On a per-driver, per-year basis, the crash rate for drivers with ITDM in the exemption program was 0.013 (0.0130 = 74 crashes ÷ 1,730 drivers ÷ 3.293 years).

[27] ''ITDM-qualified drivers'' are those the Agency believes would qualify under this proposed rule to receive medical certificates enabling them to operate CMVs in interstate commerce were they to undergo a DOT medical examination. The derivation of the estimated number of ITDM-qualified drivers at the three participation rates evaluated is shown in section 2.4.1 of the regulatory evaluation.

[28] Some drivers continued driving CMVs after their exemption was rescinded or terminated. It is unlikely that these drivers stopped taking insulin. Instead, it is most likely that these drivers ignored the prohibition on driving while being treated with insulin unless the driver holds an exemption.

Data indicate that the safety performance for CMV drivers with ITDM who hold exemptions is as good as that of the general population of CMV drivers. The table below shows crashes reported to MCMIS for all FMCSA-regulated CMV drivers from 2005 to 2011. Over this period, there was an average of 134,191 crashes reported to MCMIS each year. FMCSA estimates that there are currently 3.5 million active CMV drivers in FMCSA-regulated operations. Consequently, the average number of crashes per year per active CMV driver is about 0.038 (134,191 ÷ 3,500,000).

TABLE 5—MCMIS CRASHES (ANY SEVERITY) INVOLVING LARGE TRUCKS, 2005–2012

Year	2005	2006	2007	2008	2009	2010	2011	Average
Crashes	149,878	148,221	148,733	134,666	111,502	122,851	123,483	134,191

Source: December 2013, MCMIS snapshot.

The proposed rule would eliminate the blanket prohibition against drivers with ITDM so that the exemption program would no longer represent the sole means of physically qualifying to operate CMVs. The Agency believes that the benefits of the proposed rule to ITDM individuals are significant. These individuals may pursue interstate driving careers after demonstrating to a ME that their condition is well-controlled and that their ability to operate CMVs safely is not compromised by their medical condition. Although the annual costs will be higher because of the increased number of drivers with stable, well-controlled ITDM who could be eligible for medical certification under the new rule, the Agency expects that drivers with ITDM will benefit from greater employment opportunities, and will realize benefits to their health through improved monitoring of their ITDM.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. ''Small entities'' consist of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.[29]

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses. Under the standards of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) (SBREFA), the proposed rule does not impose a significant economic impact on a substantial number of small entities (SEISNOSE) because the medical standards apply to individuals seeking to operate a CMV in interstate commerce; they are qualifications for an occupation rather than for small entities. Although there are individual drivers who are self-employed, qualifications for an occupation are not considered a small business issue.

Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

C. Assistance for Small Entities

Under section 213(a) of SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. Linda Phillips, using the contact information in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, taken together, or by the private sector of $151 million (which is the value in 2012 after adjusting for inflation $100 million from 1995) or more in any 1 year. FMCSA's assessment is that this proposed rule would not result in such an expenditure.

E. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, (69 FR 9680) that this NPRM does not have any significant impact on the environment. In addition, the actions in this rulemaking are categorically excluded from further analysis and documentation per paragraph 6(b) and 6(s)(7) of Appendix 2 of FMCSA's Order 5610.1. A Categorical Exclusion determination is available for inspection or copying in the *www.regulations.gov* Web site listed under **ADDRESSES**.

FMCSA analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. The Agency has determined that this proposed rule is exempt from the CAA's general conformity requirement since the action results in no increase in emissions.

F. Environmental Justice (E.O. 12898)

Under E.O. 12898, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a Federal agency must obtain approval from the OMB for each

[29] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

collection of information it conducts, sponsors, or requires through regulations. 44 U.S.C. 3501–3520. Current exemption program applicants provide personal, employee health, and driving information during the application process. In the currently drafted supporting statement for the Information Collection Request (ICR), ''Medical Qualifications of Drivers'' (OMB control number 2126–0006), FMCSA attributes 2,219 annual burden hours to the applications made by CMV drivers to the current exemption program, and this proposed rule would eliminate this entire burden. However it would add fewer burden hours for the information collection of the TC who prepares written notification for the ME on the driver health, the completion of the ME report and results, and the ME's submission of the exam data and Medical Certificates to FMCSA. The supporting statement for this ICR is on display in the docket for your review and comment.

H. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)

E.O. 12630 requires Federal agencies to consider the potential takings implications of their proposed actions, decisions, or regulations on constitutionally protected property rights, and document takings implications in all significant rulemaking documents that must be submitted to the OMB. FMCSA has determined that this proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630.

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

This proposed rule meets applicable standards in sections 3(a) (regarding the general duty to review regulations) and 3(b)(2) (addressing important issues affecting clarity and general draftsmanship) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children (E.O. 13045)

E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' requires that agencies issuing economically significant rules, which concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. 62 FR 19885 (Apr. 23, 1997). Section 5 of E.O. 13045 directs an agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The FMCSA has determined that this proposed rule is not a covered regulatory action as defined under E.O. 13045, because this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

K. Federalism (E.O. 13132)

Under E.O. 13132, a rule has implications for federalism if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on States or localities. FMCSA has analyzed this proposed rule under that E.O. and has determined that it does not have implications for federalism. Nothing in this proposed rule would preempt State law or regulation or impose substantial direct compliance costs on these governmental entities.

L. Intergovernmental Review (E.O. 12372)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

FMCSA analyzed this proposed rule in accordance with the principles and criteria in E.O. 13175, Consultation and Coordination with Indian Tribal Governments. This rulemaking does not significantly or uniquely affect Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of E.O. 13175 do not apply, and no tribal summary impact statement is required.

N. Energy Supply, Distribution, or Use (E.O. 13211)

FMCSA has analyzed this proposed rule under E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposal is not a significant energy action within the meaning of section 4(b) of the E.O. This proposal is not economically significant and would not have a significant adverse effect on the supply, distribution, or use of energy.

O. Privacy Impact Analysis

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. In accordance with this Act, a privacy impact analysis is warranted to address any privacy implications contemplated in the proposed rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the privacy implications to the Department of Transportation, Office of the Secretary's Privacy Office to determine whether a PIA is required. The DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing Personally Identifying Information and has examined protections and alternative information handling processes in developing the proposal in order to mitigate potential privacy risks. The privacy risks and effects associated with this proposed rule are not unique and have previously been addressed by the medical examination/certification requirements in the National Registry of Certified Medical Examiners (National Registry) and the Medical Examiner's Certification Integration PIA published on the DOT Privacy Web site and the DOT/FMCSA 009—National Registry of Certified Medical Examiners System of Records Notice (SORN) (77 FR 24247) published on April 23, 2012. An additional PIA and SORN for this rulemaking is not required.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Q. E-Government Act of 2002

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. FMCSA has

determined that this proposed rulemaking does not involve new or substantially changed technology.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Diabetes, Drug abuse, Drug testing, Highway safety, Medical, Motor carriers, Physical qualifications, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 391 as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Revise § 391.41(b)(3) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control, unless the person meets the requirements in § 391.46;

* * * * *

■ 3. Revise § 391.45 to read as follows:

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to operate a commercial motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;

(b) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months, unless the driver is required to be examined and certified in accordance with paragraphs (c), (d), (e) or (f) of this section;

(c) Any driver authorized to operate a commercial motor vehicle only within an exempt intra-city zone pursuant to § 391.62, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months;

(d) Any driver authorized to operate a commercial motor vehicle only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive during the preceding 12 months;

(e) Any driver who has diabetes mellitus requiring insulin for control and who qualifies for a medical certificate under the standards in § 391.46, if such a person has not been medically examined and certified as qualified to drive during the preceding 12 months;

(f) Any driver whose ability to perform his or her normal duties has been impaired by a physical or mental injury or disease.

■ 4. Add new § 391.46 to read as follows:

§ 391.46 Physical qualification standards for a person with insulin-treated diabetes mellitus.

(a) *Diabetes mellitus requiring insulin.* A person with diabetes mellitus requiring insulin for control is physically qualified to operate a commercial motor vehicle in interstate commerce provided:

(1) The person otherwise meets the physical qualification standards in § 391.41 or has the exemption or skill performance evaluation certificate, if required; and

(2) The person has the medical evaluations required by paragraph (b) of this section and meets the monitoring requirements in paragraph (c) of this section.

(b) *Medical evaluations.* A person with diabetes mellitus requiring insulin for control must have the following medical examinations.

(1) *Evaluation by the treating clinician.* Prior to the annual or more frequent examination required by § 391.45, the person must be evaluated by the treating clinician. For purposes of this paragraph, ''treating clinician'' means a physician or health care professional who manages and prescribes insulin for the treatment of individuals with diabetes mellitus. The treating clinician must determine that within the previous 12 months the person has—

(i) Had no severe hypoglycemic reaction resulting in a loss of consciousness or seizure, or requiring the assistance of another person, or resulting in impaired cognitive function; and

(ii) Properly managed his or her diabetes.

(2) *Medical examiner's examination.* (i) At least annually, the person must be medically examined and certified as physically qualified in accordance with § 391.43 and free of complications that might impair his or her ability to operate a commercial motor vehicle.

(ii) The medical examiner must obtain written notification from the person's treating clinician that the person's diabetes is being properly managed and must evaluate whether the person is physically qualified to operate a commercial motor vehicle.

(c) *Blood glucose records.* During the period of medical certification, the driver with insulin-treated diabetes mellitus must monitor and maintain blood glucose records as determined by the treating clinician and submit those blood glucose records to the treating clinician at the time of the evaluation required in paragraph (b)(1) of this section.

Issued under the authority of delegation in 49 CFR 1.87.

Dated: April 22, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–09993 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XD680

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List the Common Thresher Shark as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Extension of public comment period.

SUMMARY: We, NMFS, announce the extension of the public comment period on our March 03, 2015, 90-day finding on a petition to list the Common Thresher Shark (*Alopias vulpinus*) as endangered or threatened under the ESA, or, in the alternative, delineate six distinct population segments (DPSs) of the common thresher shark, as described in the petition, and list them as endangered or threatened. As part of that finding, we solicited scientific and commercial information about the status of this species and announced a 60-day comment period to end on May 04, 2015. Today, we extend the public comment period by 60 days to July 6, 2015. Comments previously submitted

need not be resubmitted, as they will be fully considered in the agency's 12-month finding.

DATES: The deadline for receipt of comments is extended from May 04, 2015, until July 6, 2015.

ADDRESSES: You may submit comments, information, or data, identified by ''NOAA–NMFS–2015–0025'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0025.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail or hand-delivery:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NMFS, Office of Protected Resources (OPR) (301) 427–8491 or Marta Nammack, NMFS, OPR (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 03, 2015, we published a positive 90-day finding on a petition from Friends of Animals requesting that we list the common thresher shark *Alopias vulpinus* as endangered or threatened under the ESA, or, in the alternative, delineate six distinct population segments (DPSs) of the common thresher shark, as described in the petition, and list them as endangered or threatened. In that notice we also announced the initiation of a status review and solicited information from the public to help inform the status review of the species and determine its risk of extinction.

We received a request to extend the public comment period by 60 days in order to provide the public with additional time to gather relevant information and adequately comment on the validity of the petitioned action in a meaningful and constructive manner. In addition, a technical error on the Regulations.gov Web site prevented the public from accessing materials in the docket folder for the 90-day finding, including existing public comments and other substantive materials. We considered the request and concluded that a 60-day extension should allow sufficient time for responders to submit comments without significantly delaying the completion of the status review. We are therefore extending the close of the public comment period from May 04, 2015 to July 6, 2015. Although we have extended the public comment period, we are unable to extend the deadline for completing the status review. As such, we urge members of the public to submit their comments as soon as possible to allow us more time to review and incorporate the submitted information where appropriate.

Authority

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

Dated: April 29, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–10348 Filed 5–1–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 85
Monday, May 4, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 28, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 3, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorizations.

OMB Control Number: 0560–0183.

Summary of Collection: The Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h (g)) authorizes producers to assign, in writing, Farm Service Agency (FSA) conservation program payments. The statute requires that any such assignment be signed and witnessed. The Agricultural Act of 1949, as amended, extends that authority to Commodity Credit Corporation (CCC) programs, including rice, feed grains, cotton, and wheat. When the recipient of a FSA or CCC payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. FSA will collect information using forms CCC–36, CCC 37, CCC–251, and CCC–252.

Need and Use of the Information: The information collected on the forms will be used by FSA employee in order to record the payment or contract being assigned, the amount of the assignment, the date, and the name and address of the assignee and the assignor. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to issue program payments jointly at the request of the producer and also terminate joint payments at the request of both the producer and joint payee.

Description of Respondent: Individuals or households.

Number of Respondents: 66,110.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 11,002.

Farm Service Agency

Title: 7 CFR 766, Direct Loan Servicing—Special.

OMB Control Number: 0560–0233.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 766 is provided under 5 U.S.C. 301 which provides that ''The head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business . . .'' The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection package describes the policies and procedures for the Farm Service Agency's (FSA) servicing of financially distressed or delinquent direct loan borrowers in accordance with the provisions of the Consolidated Farm and Rural Development Act (Act) (Pub. L. 87–128), as amended. FSA's loan servicing options include disaster set-aside, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), buyout at market value, and homestead protection.

Need and Use of the Information: Information collections are submitted by FLP direct loan borrowers to the local FSA office serving the country in which their business is headquartered. The information is necessary to provide supervised credit and authorized servicing actions to financially distressed and delinquent direct borrowers as legislatively mandated.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 14,934.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 15,850.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–10319 Filed 5–1–15; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 28, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Utility Service

Title: Substantially Underserved Trust Areas (SUTA), 7 CFR 1700, Subpart D.

OMB Control Number: 0572–0147.

Summary of Collection: The 2008 Farm Bill (P.L. 110–246) authorized the Substantially Underserved Trust Area (SUTA) initiative. The SUTA initiative identifies the need and improves the availability of Rural Utility Service (RUS) programs to reach trust areas. The initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecom and broadband programs.

Need and Use of the Information: RUS provides loan, loan guarantee and grant programs for rural electric, water and waste, and telecommunications and broadband infrastructure. Eligible applicants notify RUS in writing, at the time of application, that it seeks consideration under the requirements of 7 CFR 1700, subpart D. The data covered by this collection are those materials necessary to allow the agency to determine applicant and community eligibility, and an explanation and documentation of the high need for the benefits of the SUTA provisions. Without this information RUS would not be able to make a prudent loan decision.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–10318 Filed 5–1–15; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0017]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Requirements for Requests To Amend Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the requirements for requests to amend import regulations for plants, plant parts, and plant products.

DATES: We will consider all comments that we receive on or before July 6, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0017*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0017* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the requirements for requests to amend import regulations, contact Ms. Nicole Russo, Assistant Director, RCC, RPM, PHP, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2159. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Requests to Amend Import Regulations.

OMB Control Number: 0579–0261.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations governing the importation of plants, fruits, vegetables, roots, bulbs, seeds, unmanufactured wood articles, and other plant products are contained in 7 CFR part 319, ''Foreign Quarantine Notices.''

Persons who request changes to the import regulations and who wish to import plants, plant parts, or plant products that are not allowed importation into the United States, must file a request with the Animal and Plant Health Inspection Service (APHIS) for consideration to determine whether the new commodity may be safely imported. Section 319.5 provides the requirements for the submission of these requests. This request process requires the use of information collection activities, including information about the requestor, information about the commodity to be imported, shipping information, a description of pests and diseases associated with the commodity, risk mitigation or management strategies, and additional information as

determined by APHIS to complete a pest risk analysis in accordance with international standards.

To assist importers who are interested in requesting the importation of plants for planting that are not allowed importation under the regulations in part 319, we are adding to this information collection a new form, Plant Protection and Quarantine Form 595, Request to Develop a Pest Risk Assessment for Plants for Planting. We estimate that this new form will account for 20 respondents, 20 total annual responses, 0.25 hours per response, and 5 estimated total annual burden hours.

We have also decreased the estimated total annual burden on respondents from 2,960 hours to 26 hours to more accurately reflect the total number of hours importers need to complete and submit a request to change the import regulations. Although the estimated annual number of respondents increased from 37 to 62, there has been a large decrease in the time (hours per response) that it takes for each respondent to prepare a request to change the import regulations. The hours per response decreased from 40 hours per response to 0.42 hours, which is a more accurate estimate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.42 hours per response.

Respondents: Importers.

Estimated annual number of respondents: 62.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 62.

Estimated total annual burden on respondents: 26 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–10392 Filed 5–1–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Re-establish the Charter of the Land Between The Lakes Advisory Board.

SUMMARY: The Department of Agriculture intends to re-establish the charter of the Land Between The Lakes Advisory Board (Board), pursuant to Section 460, of the Land Between The Lakes Protection Act of 1998 (Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Board is to advise the Secretary of Agriculture (Secretary) on means of promoting public participation for the land and resource management plan for the recreation area and environmental education.

FOR FURTHER INFORMATION CONTACT: Tina Tilley, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Comments may also be sent via email to *ttilley@fs.fed.us* or via facsimile to 270–924–2150. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Board was established pursuant to the Act and in accordance with the provisions of FACA; the Secretary intends to renew the charter for the Board. The Secretary has determined the work of the Board is in the public interest and relevant to the duties of the Department of Agriculture. The Board provides advice to the Secretary on: (1) Means of promoting public participation for the land and resource management plan for the recreation area; and (2) environmental education.

Board Membership

The Act outlines the specific Federal, State, and local agencies that will be represented on the Board, which includes 17 appointees. The interests listed in the Act are as follows:

(1) Four persons appointed by the Secretary, including:

a. Two residents of the State of Kentucky and

b. Two residents of the State of Tennessee;

(2) Two persons appointed by the Governor of Kentucky;

(3) Two persons appointed by the Governor of Tennessee;

(4) Two persons appointed by the Commissioner of Kentucky, Department of Fish and Wildlife Resources or designee;

(5) One person appointed by the Commission of Tennessee Wildlife Resources or designee;

(6) Two persons appointed by the Judge Executive of Lyon County, Kentucky;

(7) Two persons appointed by the Judge Executive of Trigg County, Kentucky; and

(8) Two persons appointed by the County Executive of Stewart County, Tennessee.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Board. Members of the Board serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Board, subject to approval by the Designated Federal Official (DFO). The Board members serve 5-year terms. In the event a vacancy arises, nominees will be sought through an open and public process and submitted to the Secretary for vetting, approval, and appointment.

Equal opportunity practices in accordance with U.S. Department of Agriculture

(USDA) policies shall be followed in all appointments to the Board. To ensure that the recommendations of the Board have been taken into account, the needs of the diverse groups served by the Department's membership should include, to the extent practicable, individuals with demonstrated ability to represent all racial and ethnic groups,

women and men, and persons with disabilities.

Dated: April 23, 2015.

Gregory L. Parham,

Assistant Secretary for Administration.

[FR Doc. 2015–10307 Filed 5–1–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration, Commerce.

Title: Domestic and International Client Export Services and Customized Forms.

OMB Control Number: 0625–0143.

Form Number(s): ITA–4096P.

Type of Request: Renewal submission.

Number of Respondents: 189,272.

Average Hours per Response: 10 minutes.

Burden Hours: 31,545 (annual).

Needs and Uses: The International Trade Administration's (ITA) U.S. Commercial Service (CS) is mandated by Congress to broaden and deepen the U.S. exporter base. The CS accomplishes this by providing counseling, programs and services to help U.S. organizations export and conduct business in overseas markets. This information collection package enables the CS to provide appropriate export services to U.S. exporters and international buyers.

The Commercial Service (CS) offers a variety of services to enable clients to begin exporting/importing or to expand existing exporting/importing efforts. Clients may learn about our services from business related entities such as the National Association of Manufacturers, Federal Express, State Economic Development offices, the Internet or word of mouth. The CS provides a standard set of services to assist clients with identifying potential overseas partners, establishing meeting programs with appropriate overseas business contacts and providing due diligence reports on potential overseas business partners. The CS also provides other export-related services considered to be of a ''customized nature'' because they do not fit into the standard set of CS export services, but are driven by unique business needs of individual clients.

The dissemination of international market information and potential business opportunities for U.S. exporters are critical components of the Commercial Service's export assistance programs and services. U.S. companies conveniently access and indicate their interest in these services by completing the appropriate forms via ITA and CS U.S. Export Assistance Center Web sites.

The CS works closely with clients to educate them about the exporting/importing process and to help prepare them for exporting/importing. When a client is ready to begin the exporting/importing process our field staff provide counseling to assist in the development of an exporting strategy. We provide fee-based, export-related services designed to help client export/import. The type of export-related service that is proposed to a client depends upon a client's business goals and where they are in the export/import process. Some clients are at the beginning of the export process and require assistance with identifying potential distributors, whereas other clients may be ready to sign a contract with a potential distributor and require due diligence assistance.

Before the CS can provide export-related services to clients, such as assistance with identifying potential partners or providing due diligence, specific information is required to determine the client's business objectives and needs. For example, before we can provide a service to identify potential business partners we need to know whether the client would like a potential partner to have specific technical qualifications, coverage in a specific market, English or foreign language ability or warehousing requirements. This information collection is designed to elicit such data so that appropriate services can be proposed and conducted to most effectively meet the client's exporting goals. Without these forms the CS is unable to provide services when requested by clients.

The forms ask U.S. exporters standard questions about their company details, export experience, information about the products or services they wish to export and exporting goals. A few questions are tailored to a specific program type and will vary slightly with each program. CS staff use this information to gain an understanding of client's needs and objectives so that they can provide appropriate and effective export assistance tailored to an exporter's particular requirements.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 28, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–10268 Filed 5–1–15; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2015]

Foreign-Trade Zone (FTZ) 154—Baton Rouge, Louisiana Notification of Proposed Production Activity Syngenta Crop Protection, LLC (Herbicides and Insecticides) St. Gabriel and Baton Rouge, Louisiana

The Greater Baton Rouge Port Commission, grantee of FTZ 154, submitted a notification of proposed production activity to the FTZ Board on behalf of Syngenta Crop Protection, LLC (Syngenta), located at facilities in St. Gabriel and Baton Rouge, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 22, 2015.

A separate application for subzone designation at the Syngenta facilities was submitted and will be processed under Section 400.31 of the Board's regulations. The facilities are used for the production of crop protection products including herbicides and insecticides, in retail packaging and bulk. Syngenta may produce its own products or provide contract manufacturing for other companies. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Syngenta from customs duty payments on the foreign-status components used in export production. On its domestic sales, Syngenta would be able to choose the duty rates during

customs entry procedures that apply to the finished products (whether in brand name or generic form) (duty rates are 5% or 6.5%) for the foreign-status inputs noted below. The finished products include the herbicides: Bicep II Magnum™; Bicep Lite II™, Dual II Magnum™; S-Moc Microcaps™; Touchdown Total™; Lexar™; Desica™; Mesotrione 28% MUP™; Sable™; Traxion™; Departure™; Refuge™; Touchdown™Hitech; Gesatop™; Gesatop-Nueve-O™; Reglone™; Traxion™; Halex GT™; Coloso Total™; Primextra II™; Demp Malonamid Tech™; Lumax™; Lumax Gold™; Reward™; Brawl II ATZ™; Bicep Maxx™; Sequence™; and Charger Maxx ATZ™. Finished products also include the following insecticides: Engeo Pleno™; Voliam Xpress™; Karate Zeon™; Eforia™ and Engeo Full™. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: s-metolachlor; mesotrione wet paste; pinoxaden (2-bromo-1,3-diethyl-5-methyl benzene); lambda-cyhaolthrin technical, pyrethroid pesticide, liquid; glyphosate acid technical 2; benoxacor (ortho nitrophenols); paraquat concentrate ES (paraquat dichloride); thiamethoxam; chlorantraniliprole; lufenuron; and diquat (duty rates range from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 15, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: April 28, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–10379 Filed 5–1–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–26–2015]

Foreign-Trade Zone (FTZ) 39—Dallas-Fort Worth, Texas, Notification of Proposed Production Activity, Valeo North America, Inc. d/b/a Valeo Compressor North America, (Motor Vehicle Air-Conditioner Compressors), Dallas, Texas

Valeo North America, Inc. d/b/a Valeo Compressor North America (Valeo), an operator of FTZ 39, submitted a notification of proposed production activity to the FTZ Board for its facility in Dallas, Texas, within FTZ 39. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 20, 2015.

Valeo already has authority to produce air-conditioner compressor assemblies for motor vehicles. The current request would add a new finished product (electromagnetic compressor/clutch assemblies) and certain foreign-status components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Valeo from customs duty payments on the foreign status components used in export production. On its domestic sales, Valeo would be able to choose the duty rates during customs entry procedures that apply to air-conditioner compressor assemblies (free) and electromagnetic compressor/clutch assemblies (3.1%) for the foreign status materials and components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: compressor/clutch assemblies; compressor bodies and housings; coils; rotors; armatures; and, fittings (parts of compressors) (duty rate ranges from free to 3.1%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 15, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 27, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–10386 Filed 5–1–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845; C–201–846]

Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations

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

DATES: *Effective Date:* May 4, 2015.

SUMMARY: As of December 19, 2014, the Department of Commerce (the Department) suspended the antidumping duty (AD) investigation of imports of sugar from Mexico, based on an agreement between the Department and signatory producers/exporters accounting for substantially all imports of sugar from Mexico, and the countervailing duty (CVD) investigation of imports of sugar from Mexico, based on an agreement between the Department and the Government of Mexico. Both agreements eliminate completely the injurious effects of exports of the subject merchandise to the United States. The Department has received timely requests to continue the AD and CVD investigations of sugar from Mexico. Pursuant to sections 734(g) and 704(g) of the Tariff Act of 1930, as amended (the Act), respectively, the Department is resuming its investigations. We are resuming the investigations as if our preliminary determinations had been published on this notice's publication date.

FOR FURTHER INFORMATION CONTACT: Kaitlin Wojnar or David Lindgren at (202) 482–3857 or (202) 482–3870, respectively; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, the Department initiated AD and CVD investigations of sugar from Mexico under sections 732 and 702 of the Act, respectively.[1] On August 25, 2014, the Department made an affirmative preliminary CVD determination and aligned the date of its final determination with that of the concurrent AD investigation.[2] On October 24, 2014, the Department made a preliminary determination of sales at less than fair value and fully extended the final determination deadline.[3]

On October 27, 2014, the Department and a representative for the Mexican sugar producers/exporters initialed a proposed agreement to suspend the AD investigation of sugar from Mexico.[4] On the same day, the Department and the Government of Mexico initialed a proposed agreement to suspend the CVD investigation of sugar from Mexico.[5] Consistent with sections 734(e)(1) and 704(e)(1) of the Act, the Department notified all interested parties and the U.S. International Trade Commission (ITC) of the proposed agreement.[6] On October 30, 2014, the Department issued a memorandum proposing a clarification of the scope of the investigations.[7] Interested parties were invited to submit written comments on the proposed suspension agreements and the proposed scope clarification by November 10, 2014. On November 7, 2014, that deadline was extended to November 18, 2014.[8] The Department received timely comments from numerous parties.

The Department and a representative of the signatory producers/exporters accounting for substantially all imports of Mexican sugar to the United States, Camara Nacional de Las Industrias Azucarera y Alcoholera (the Mexican Sugar Chamber), signed an agreement suspending the AD investigation on December 19, 2014.[9] On the same day, the Department and the Government of Mexico signed an agreement suspending the CVD investigation.[10] In accordance with sections 734(f) and 704(f) of the Act, the Department notified the ITC of its suspension of the AD and CVD investigations.[11] The scope of the investigations was revised, as provided in the Suspension Agreements, based on comments received from interested parties.

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the ITC to conduct a review to determine whether the injurious effects of imports of the subject merchandise are eliminated completely by the AD Suspension Agreement (a section 734(h) review) and the CVD Suspension Agreement (a section 704(h) review).[12] On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the AD and CVD investigations.[13] The American Sugar Coalition and its members[14] (collectively, Petitioners) and the Mexican Sugar Chamber challenged both Imperial's and AmCane's standing to request continuation under sections 734(g) and 704(g) of the Act.[15] The Department solicited comments on the standing issue and notified interested parties that, if it was determined that continuation is warranted, the suspended investigations would resume following the March 24, 2015, deadline for the ITC's section 734(h) and section 704(h) reviews.[16] We received comments and rebuttal comments on the standing issue from several interested parties.[17]

On March 19, 2015, in a unanimous vote, the ITC found that the Suspension Agreements eliminate completely the injurious effects of imports of sugar from Mexico.[18] On the same day, the Department announced that it would issue a decision regarding continuation

[1] *See Sugar from Mexico: Initiation of Antidumping Duty Investigation,* 79 FR 22795 (April 24, 2014); *see also Sugar from Mexico: Initiation of Countervailing Duty Investigation,* 79 FR 22790 (April 24, 2015).

[2] *See Sugar from Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 79 FR 51956 (September 2, 2014).

[3] *See Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 65189 (November 3, 2014).

[4] *See* Department Memorandum, ''Draft Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' October 27, 2014.

[5] *See* Department Memorandum, ''Draft Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,'' October 27, 2014.

[6] *See* Department Memorandum, ''Memorandum to All Interested Parties,'' October 27, 2014.

[7] *See* Department Memorandum, ''Antidumping and Countervailing Duty Investigations of Sugar from Mexico: Proposed Scope Clarification,'' October 30, 2014.

[8] *See* Department Memorandum, ''Sugar from Mexico: Notice of Extension of Deadline to Submit Comments on Draft Suspension Agreements and Scope Clarification,'' November 7, 2014.

[9] *See Sugar from Mexico: Suspension of Antidumping Duty Investigation,* 79 FR 78039 (December 29, 2014), at Attachment, ''Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico'' (AD Suspension Agreement).

[10] *See Sugar from Mexico: Suspension of Countervailing Duty Investigation,* 79 FR 78044 (December 29, 2014), at Attachment, ''Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico'' (CVD Suspension Agreement) (collectively, with the AD Suspension Agreement, the Suspension Agreements).

[11] *See* Letter from the Department, ''Suspension of Antidumping and Countervailing Duty Investigations of Sugar from Mexico,'' December 22, 2014.

[12] *See* Letter from Imperial, ''Sugar from Mexico—Notice of Filing of Petition for Review of Suspension Agreements to Eliminate the Injurious Effect of Subject Imports,'' January 8, 2015; *see also* Letter from AmCane, ''Sugar from Mexico: Notice of Petition for Review of Suspension Agreements,'' January 8, 2015.

[13] *See* Letter from Imperial, ''Sugar from Mexico, Inv. Nos. A–201–845 and C–201–846—Request for Continuation of Investigations,'' January 16, 2015; *see also* Letter from AmCane, ''Sugar from Mexico: Request for Continuation of Investigations,'' January 16, 2015.

[14] The American Sugar Coalition is comprised of the following individual members: American Sugar Cane League; American Sugar Refining, Inc.; American Sugarbeet Growers Association; Florida Sugar Cane League; Hawaiian Commercial and Sugar Company; Rio Grande Valley Sugar Growers, Inc.; Sugar Cane Growers Cooperative of Florida; and United States Beet Sugar Association.

[15] *See* Letter from Petitioners, ''Sugar from Mexico: Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC to Request Continuation of Suspended Investigations,'' January 20, 2015; *see also* Letter from the Mexican Sugar Chamber, ''Letter Supporting Petitioners' Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC,'' January 22, 2015. Rebuttal comments were filed on January 27 and 28, 2015, and Petitioners filed a reply on January 29, 2015. *See* Letter from Imperial, ''Sugar from Mexico, Inv. Nos. A–201–845 and C–201–846—Response to Opposition to Standing of Imperial Sugar Company to Request Continuation of Suspended Investigations,'' January 27, 2015; *see also* Letter from AmCane, ''Sugar from Mexico: Response to Letter Disputing Standing of AmCane Sugar LLC to Request Continuation of Suspended Investigations,'' January 28, 2015; Letter from Petitioners, ''Sugar from Mexico: Reply to Imperial's and AmCane's Responses to Petitioners' Opposition to Standing to Request Continuation of Suspended Investigations,'' January 29, 2015.

[16] *See* Department Memorandum, ''Solicitation of Comments and Timetable for Requests to Continue the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,'' January 28, 2015.

[17] *See* Letter from the Mexican Sugar Chamber, ''Investigation of Sugar from Mexico—Opposition to Standing of Imperial Sugar Company and AmCane Sugar LLC,'' February 10, 2015; *see also* Letter from Sweetener Users Association, ''Sugar from Mexico—Comments of the Sweetener Users Association in Support of Determination that Certain Sugar Refiners Have Standing to Request Continuation of Investigations,'' February 10, 2015; Letter from Petitioners, ''Sugar from Mexico: Comments on Continuation of Suspended Investigations,'' February 10, 2015; Letter from Imperial, ''Sugar from Mexico, Inv. Nos. A–201–845 and C–201–846—Rebuttal Comments in Response to Opposition to Standing of Imperial Sugar Company to Request Continuation of Suspended Investigations,'' February 17, 2015; Letter from AmCane, ''Sugar from Mexico: Response to Petitioners' Feb. 10 Comments on Continuation of Suspended Investigations,'' February 17, 2015; Letter from Petitioners, ''Sugar from Mexico: Rebuttal to Sweetener Users Association's Comments on Standing of Imperial Sugar Company and AmCane Sugar LLC,'' February 18, 2015.

[18] *See* Department Memorandum, ''Requests to Continue the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,'' March 19, 2015.

of the investigations promptly after the ITC made its views and findings available.[19] On March 24, 2015, the ITC notified the Department of its determinations.[20] On April 10, 2015, the ITC provided a report of its views and findings in the section 734(h) and section 704(h) reviews to the Department.[21] On April 24, 2015, we issued a memorandum regarding our determination that Imperial and AmCane are interested parties which are parties to the investigations and, accordingly, have standing to request continuation of the AD and CVD investigations.[22]

Continuation of Investigations

Sections 734(g) and 704(g) of the Act require the Department to continue a suspended investigation if it receives a request for continuation within 20 days of the notice of suspension of an investigation from an interested party, as described in section 771(9)(C) through (G) of the Act, which is a party to the investigation. As noted above, Imperial and AmCane filed timely requests for continuation. Having determined that Imperial and AmCane have standing to request continuation, the Department is continuing its AD and CVD investigations of imports of sugar from Mexico pursuant to sections 734(g) and 704(g) of the Act, respectively. The Department is resuming the investigations as if its preliminary determinations had been published on this notice's publication date. Consistent with section 735(a)(2)(A) of the Act, as well as the CVD investigation's prior alignment with the concurrent AD investigation, we intend to make our final determination in both investigations within 135 days of this notice's publication date.

Dated: April 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–10253 Filed 5–1–15; 8:45 am]

BILLING CODE 3510–DS–P

[19] *Id.*

[20] *See* Letter from the ITC, Notification of Determination, March 24, 2015.

[21] *See* Letter from the ITC, Notification of Report, April 9, 2015 (notifying the Department that a report on the ITC's section 734(h) and section 704(h) reviews would be available on the ITC's electronic filing system in one business day).

[22] *See* Department Memorandum, ''Standing of Imperial Sugar and AmCane Sugar to Request Continuation of the AD and CVD Investigations on Sugar From Mexico,'' April 24, 2015.

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 May 2015, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC, 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200 Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: April 24, 2015, in Washington DC.

Thomas Luebke,

Secretary.

[FR Doc. 2015–10345 Filed 5–1–15; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0009, Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on large trader reports and related forms that are needed to ensure that the CFTC receives adequate information to carry out its market and financial surveillance programs.

DATES: Comments must be submitted on or before July 6, 2015.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0009 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Hannah Ropp, Surveillance Analyst, Division of Market Oversight; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; phone: (202) 418–5228; fax: (202) 418–5507; email: *hropp@cftc.gov,* and refer to OMB Control No. 3038–0009.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.[1]

Title: Large Trader Reports (OMB Control No. 3038–0009). This is a request for extension of a currently approved information collection.

Abstract: The reporting rules covered by OMB control number 3038–0009 (''Collection'') are structured to ensure

[1] This notice does not solicit comment on the proposed amendments to this collection that may result from the proposal titled Position Limits for Derivatives (78 FR 75680, Dec. 12, 2013). Comments on the Paperwork Reduction Act implications of the Position Limits for Derivatives proposal were solicited through the proposal itself, the comment period for which (as extended and reopened) closed on March 30, 2015.

that the Commission receives adequate information to carry out its market and financial surveillance programs. The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations.

Previously, all reporting rules contained in parts 15 through 19 and 21 of the Commission's regulations were covered by the Collection; however, a recent rulemaking action relocated several recordkeeping and reporting burdens from this collection to a new collection, OMB Control Number 3038–0103. Specifically, that rulemaking appropriated the information collection burdens associated with Commission regulations 17.01, 18.04, and 18.05. Accordingly, this renewal will update the Collection's current burden estimates and officially remove the duplicative burdens from the Collection.

The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (''Act''). Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits. Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options. Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and registrants (including futures commission merchants, introducing brokers, floor brokers, or floor traders), and requires each registrant to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere. Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made, or obtained on designated contract markets, or derivatives transaction execution facilities, equal or exceed Commission-set levels.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be 0.26 hours per response, on average. These estimates include the time to locate the information related to the exemptions and to file necessary exemption paperwork.

Respondents/Affected Entities: Large Traders, Clearing Members, Contract Markets, and other entities affected by Commission regulations 16.00 and 17.00 as well as Parts 19 and 21.

Estimated number of respondents: 453.

Estimated total annual burden on respondents: 18,348 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 et seq.)

[2] 17 CFR 145.9.

Dated: April 28, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–10314 Filed 5–1–15; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0018]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the approval for an existing information collection titled, ''Consumer Leasing Act (Regulation M) 12 CFR 1013.''

DATES: Written comments are encouraged and must be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Leasing Act (Regulation M) 12 CFR 1013.

OMB Control Number: 3170–0006.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 13,718.

Estimated Total Annual Burden Hours: 5,500.

Abstract: Consumers rely upon the disclosures required by the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (CLA) and Regulation M, 12 CFR 1013, for information to comparison shop among leases, as well as to ascertain the true costs and terms of lease offers. Federal and state enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. This information provides the primary evidence of law violations in CLA enforcement actions brought by federal agencies. Without Regulation M's recordkeeping requirement, the agencies' ability to enforce the CLA would be significantly impaired.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: April 28, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–10367 Filed 5–1–15; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0017]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the approval for an existing information collection titled, ''Mortgage Assistance Relief Services (Regulation O) 12 CFR part 1015.''

DATES: Written comments are encouraged and must be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Mortgage Assistance Relief Services (Regulation O) 12 CFR part 1015.

OMB Control Number: 3170–0007.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 107.

Estimated Total Annual Burden Hours: 322.

Abstract: The required disclosures under Regulation O (12 CFR part 101) assist prospective purchasers of Mortgage assistance relief services (MARS) in making well-informed decisions and avoiding deceptive and unfair acts and practices. The information that must be kept under Regulation O's recordkeeping requirements is used by the CFPB and the Federal Trade Commission for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: April 28, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–10363 Filed 5–1–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0067]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The National Geospatial-Intelligence Agency is establishing a new system of records in its inventory of record systems subject to the Privacy Act of 1974, as amended. The system is

entitled ''NGA–010, National Geospatial-Intelligence Agency Security Financial Disclosure Reporting Records System''. This system will allow NGA to collect and use employee financial disclosure information to facilitate a variety of NGA's mission-related duties.

DATES: Comments will be accepted on or before June 3, 2015. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Kenneth James, Acting Branch Chief, National Geospatial-Intelligence Agency (NGA), Financial Disclosure Program Manager, 7500 GEOINT Drive, Springfield, VA 22150 or by calling 571–557–0110.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in FOR FURTHER INFORMATION CONTACT or at the Defense Privacy and Civil Liberties Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on Insert Date, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NGA–010

SYSTEM NAME:

National Geospatial-Intelligence Agency Security Financial Disclosure Reporting Records System.

SYSTEM LOCATION:

Records are maintained at National Geospatial-Intelligence Agency (NGA) Headquarters in Washington, DC metro facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NGA employees, military personnel, contractors, and external applicants who have been extended a conditional offer of employment employed by or assigned to NGA facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name, date of birth, Social Security Number (SSN), address, marital status, telephone number and work email address, employee identification number, employee status, annual income, financial information, investment information, real estate, owned and leased asset information.

The system also contains any records of the analysts' examination of the form and related materials, including any notations, memoranda, investigative notes and summaries or other observations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 402a, Coordination of counterintelligence activities; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information; Public Law 103–359, Title VIII, Counterintelligence and Security Enhancements Act of 1994; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; 5 CFR part 732; 5 CFR part 736; 32 CFR part 147; DCID 6/4; 5 U.S.C. 301 Departmental Regulations; DoDD 5105.60, National Geospatial-Intelligence Agency (NGA); 5 U.S.C. 7532 Suspension and Removal; E.O. 10450, Security Requirements for Government Employees; E.O. 12958, Classified National Security Information; E.O. 12968, Access to Classified Information; Section 1.350 U.S.C 401–413, National Security Act of 1947, as amended; DoD 5200.2–R, DoD Personnel Security Program; DCID 1/14, Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

NGA collects and uses employee financial disclosure information to facilitate a variety of NGA's mission-related duties, including activities related to personnel security, access controls, security clearances, and counterintelligence activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES FOR SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be specifically disclosed outside of the DoD as a routine use pursuant to 5 U.S.C. a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of NGA's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, employee identification number or SSN.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable NGA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is strictly limited to those individuals who have a need to know for the performance of their official duties and who have appropriate clearances or permissions. Some of the technical controls include limited, role based access as well as profiles based access to limit users to only data that is needed for the performance of their official duties. The system is located in a secure data center and operated by Federal personnel and contractors.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approve the retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Security and Installations Directorate, Personnel Security Division, Security Financial Disclosure Branch, National Geospatial-Intelligence Agency, 7500 GEOINT Drive, Springfield, VA 22150–7500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150–7500.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150–7500.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state).under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.

CONTESTING RECORDS PROCEDURES:

Individuals contesting the accuracy of records contained in this system of records about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 Geoint Drive, Springfield, VA 22150–7500.

The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.

RECORD SOURCE CATEGORIES:

Information originates from the individual completing the security disclosure form. The system also contains records originating from the security specialist reviewing the financial submission, including any notations, memoranda, investigative notes and summaries or other observations made by the NGA specialist who reviews the file for trend analysis and/or anomalies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access only to the information they submitted however exemption applies to the extent that disclosure would reveal the identity of a confidential source. The NGA specialist case notes will be kept separate from the individual's data submission. Those case notes will contain investigative case leads and summaries, sensitive processes, evidence gathered from external sources and potential referrals to law enforcement agencies. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 552a(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 320. For additional information, contact the system manager.

[FR Doc. 2015–10060 Filed 5–1–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0021]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; 2015–16 National Teacher and Principal Survey (NTPS) Full-Scale Data Collection

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is

proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0021 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2015–16 National Teacher and Principal Survey (NTPS) Full-Scale Data Collection.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 50, 028.

Total Estimated Number of Annual Burden Hours: 26, 235.

Abstract: The National Teacher and Principal Survey (NTPS) is a redesign of the Schools and Staffing Survey (SASS) and is ED's primary source of information on the teacher and principal labor market and on what is happening in K–12 public schools from teachers' and principals' perspectives. NTPS is an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also eligible for NTPS. Starting in 2015–2016, the NTPS will be conducted every two years utilizing core content and a series of rotating modules to allow timely collection of important education trends and conducting trend analyses. The NTPS is the Department's regular source of data on salaries, out-of-pocket expenses, qualifications, and race/ethnic and age distribution of teachers; along with salaries and race/ethnic and age distribution of principals; and school start times and student teacher ratios. This request is to conduct the 2015–16 NTPS full-scale data collection.

Dated: April 29, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–10346 Filed 5–1–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0058]

Agency Information Collection Activities; Comment Request; Application for the Rural Education Achievement Program (REAP)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 6, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0058 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jean Marchowsky, (202) 205–2161.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use

of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for the Rural Education Achievement Program (REAP).

OMB Control Number: 1810–0646.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 549.

Total Estimated Number of Annual Burden Hours: 3,277.

Abstract: This data collection is pursuant to the Secretary's authority under Part B of Title VI of the Elementary and Secondary Education Act (ESEA), to award funds under two grant programs designed to address the unique needs of rural school districts—the Small, Rural School Achievement (SRSA) program (ESEA Section 6212) and the Rural and Low-Income School (RLIS) program (ESEA Section 6221). Under the SRSA program, the Secretary awards grants directly to eligible local educational agencies (LEAs) on a formula basis. Under the RLIS program, eligible school districts are sub-recipients of funds the Department awards to State educational agencies (SEAs) on a formula basis. For both grant programs, the Department awards funds based on a determination of the eligibility of individual school districts and the calculation of the allocation each eligible district should receive according to formula prescribed in the statute. This data collection package consists of two forms and related documents that are used to accomplish the grant award process each year: (1) A spreadsheet used by SEAs to submit information to identify RLIS and SRSA-eligible LEAs and to allocate funds based on the appropriate formula, and (2) an application form for SRSA-eligible LEAs to apply for funding. This submission requests a three-year extension of the current approved collection package (OMB #1810–0646). The REAP eligibility spreadsheet (Form 1) has no substantive changes or revisions from the previously-approved collection under OMB#1810–0646. Similarly, the SRSA Application (Form 2) is essentially unchanged from the previous collection. The instructions accompanying both Form 1 and Form 2 remain unchanged from the previously-approved collection, except for minor changes to update dates and contact information. None of these changes require SEAs to submit additional data.

Dated: April 28, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–10313 Filed 5–1–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wave Energy Prize

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of the Wave Energy Prize.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the availability of the Wave Energy Prize and of DOE's responses to public comments on the draft Prize Rules and Prize Terms and Conditions. The prize is designed to achieve game-changing performance enhancements to wave energy conversion (WEC) devices, establishing a pathway to sweeping cost reductions on a commercial scale. The prize consists of three phases—design, build, and test and evaluation. Prize purses to the winner(s): Grand Prize ($1,500,000), 2nd Place Finisher ($500,000), and 3rd Place Finisher ($250,000).

DATES: DOE launches the Wave Energy Prize and opens the Prize for public registration on May 1, 2015. The Winner(s) of the Prize, if any, is expected to be announced by the end of 2016. All dates are subject to change.

ADDRESSES: Interested persons can register for the Wave Energy Prize at waveenergyprize.org on the ''Register'' page. The final Prize Rules, the final Prize Terms and Conditions, and DOE's responses to public comments on the draft Prize Rules and Prize Terms and Conditions, can all be found are found under the ''Rules'' tab of the ''About'' page. Please submit questions and comments to: *info@waveenergyprize.org.*

FOR FURTHER INFORMATION CONTACT: Please submit questions and comments to: *info@waveenergyprize.org.*

SUPPLEMENTARY INFORMATION: The America COMPETES Reauthorization Act of 2010 (America COMPETES), Public Law 111–358, enacted January 4, 2011, authorizes Federal agencies to issue competitions to stimulate innovations in technology, education, and science. The Wave Energy Prize leverages the America COMPETES Act to provide incentives to design, build, and test innovative WEC concepts.

DOE launches the Wave Energy Prize, a public prize challenge sponsored by DOE's Water Power Program. The prize is designed to increase the diversity of organizations involved in WEC technology development, while motivating and inspiring existing stakeholders. DOE envisions this competition will achieve game-changing performance enhancements to WEC devices, establishing a pathway to sweeping cost reductions on a commercial scale.

The wave energy industry is young and is experiencing many new innovations as evidenced by a sustained growth in patent activity. While the private industry is developing these early-concept WEC devices through design and benchtop prototype testing, funding is hard to secure for performance testing and evaluation of WEC devices in wave tanks at a meaningful scale. This is a problem for the industry since scaled WEC prototype tank testing, validation, and evaluation are key steps in the advancement of WEC technologies through the technical readiness levels to reach commercialization.

Goal of the Wave Energy Prize: The Wave Energy Prize will encourage the development of more efficient WEC devices that double the energy captured from ocean waves, which in turn will reduce the cost of wave energy, making it more competitive with traditional energy solutions.

Economic impact of the Wave Energy Prize: A successful Wave Energy Prize could jump-start private sector innovation critical to the country's long-term economic growth, energy security, and international competitiveness in the wave energy conversion sector.

Why participate in the Wave Energy Prize? The Wave Energy Prize seeks to attract innovative ideas from developers new to the industry and next-generation ideas from existing developers by offering a monetary prize purse and providing an opportunity for tank testing and evaluation of scaled WEC device prototypes at the U.S. Navy's Maneuvering and Seakeeping Basin (MASK) facility in Carderock, MD.

Eligibility: U.S. entities are able to participate in the Wave Energy Prize. This includes U.S. persons and companies as well as foreign companies that are incorporated in and maintain a primary place of business in the United States. Full eligibility requirements for the Wave Energy Prize are set in accordance with those established by America COMPETES, and are fully outlined in the Wave Energy Prize Rules

document available at waveenergyprize.org.

Selection of winner(s): Average Climate Capture Width per Characteristic Capital Expenditure (ACE) has been selected by the Wave Energy Prize as a reduced content metric that is a proxy for levelized cost of energy. To be eligible for consideration for prize purses, WEC devices tested during the Prize must exceed a threshold value of ACE of three meters per million dollars, representing a 100% increase, or doubling, of ACE above the current ''state of the art'' in representative sea states and deep water. WEC devices that surpass the ACE threshold will be ranked according to their Hydrodynamic Performance Quality (HPQ), a metric that holistically evaluates WEC performance and reliability. This HPQ ranking will be used to determine the Grand Prize Winner, 2nd Place Finisher, and 3rd Place Finisher of the Wave Energy Prize. Further details on these technical requirements are available in the Prize Rules and Terms and Conditions at *waveenergyprize.org.*

Issued on April 27, 2015 in Washington, DC.

José Zayas,

Director, Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2015–10409 Filed 5–1–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–74–000.
Applicants: Recurrent Energy, LLC.
Description: Self-Certification of RE Mustang LLC.
Filed Date: 4/27/15.
Accession Number: 20150427–5120.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: EG15–75–000.
Applicants: Recurrent Energy, LLC.
Description: Self-Certification of RE Mustang 3 LLC.
Filed Date: 4/27/15.
Accession Number: 20150427–5121.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: EG15–76–000.
Applicants: Recurrent Energy, LLC.
Description: Self-Certification of RE Mustang 4 LLC.
Filed Date: 4/27/15.
Accession Number: 20150427–5122.
Comments Due: 5 p.m. ET 5/18/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3168–012; ER14–2871–003; ER10–3243–005; ER15–356–002; ER15–357–002; ER10–3244–005; ER10–3245–004; ER10–3249–004; ER10–3250–004; ER10–3169–008; ER10–3251–003; ER14–2382–003; ER15–621–002; ER12–2570–008; ER11–2639–004; ER15–622–002; ER15–463–002; ER15–110–002; ER13–1586–004; ER10–1992–010; ER13–618–007.

Applicants: ArcLight Energy Marketing, LLC, Cameron Ridge, LLC, Chandler Wind Partners, LLC, Chief Conemaugh Power, LLC, Chief Keystone Power, LLC, Coso Geothermal Power Holdings, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Michigan Power Limited Partnership, Oak Creek Wind Power, LLC, ON Wind Energy LLC, Pacific Crest Power, LLC, Panther Creek Power Operating, LLC, Ridge Crest Wind Partners, LLC, Ridgetop Energy, LLC, San Gorgonio Westwinds II, LLC, Terra-Gen Energy Services, LLC, TGP Energy Management, LLC, Victory Garden Phase IV, LLC, Westwood Generation, LLC.

Description: Notice of Non-Material Change in Status of ArcLight Energy Marketing, LLC, et al.
Filed Date: 4/24/15.
Accession Number: 20150424–5366.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER13–342–007.
Applicants: CPV Shore, LLC.
Description: Notice of Change in Status of CPV Shore, LLC.
Filed Date: 4/24/15.
Accession Number: 20150424–5370.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER15–237–003.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment per 35.17(b): 2015–04–24_Response to JDA Deficiency Ltr to be effective 1/1/2015.
Filed Date: 4/24/15.
Accession Number: 20150424–5344.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER15–295–002.
Applicants: Black Hills/Colorado Electric Utility Co.
Description: Tariff Amendment per 35.17(b): Joint Dispatch Amendment Filing—Response to Second Staff Letter to be effective 1/1/2015.
Filed Date: 4/24/15.
Accession Number: 20150424–5339.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER15–348–002.
Applicants: Black Hills/Colorado Electric Utility Co.
Description: Tariff Amendment per 35.17(b): Joint Dispatch Amendment Filing—Response to Second Staff Letter to be effective 1/1/2015.
Filed Date: 4/24/15.
Accession Number: 20150424–5337.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER15–1565–000.
Applicants: Sky River LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Sky River LLC Amendment to the Open Access Transmission Tariff to be effective 4/25/2015.
Filed Date: 4/24/15.
Accession Number: 20150424–5341.
Comments Due: 5 p.m. ET 5/15/15.

Docket Numbers: ER15–1566–000.
Applicants: Metropolitan Edison Company, Exelon Generation Company, LLC.
Description: Notice of Cancellation of Service Agreement of Metropolitan Edison Company and Exelon Generation Company, LLC.
Filed Date: 4/27/15.
Accession Number: 20150427–5328.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: ER15–1567–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): PJM Original Service Agreement No. 4117, Queue V4–011 to be effective 3/26/2015.
Filed Date: 4/27/15.
Accession Number: 20150427–5378.
Comments Due: 5 p.m. ET 5/18/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–1–000.
Applicants: Arbuckle Mountain Wind Farm LLC, Blue Canyon Windpower LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower VI LLC, Cloud County Wind Farm, LLC, Waverly Wind Farm LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Madison Windpower LLC, Marble River, LLC, Sustaining Power Solutions LLC.
Description: Quarterly Land Acquisition Report of Arbuckle Mountain Wind Farm LLC, et al.
Filed Date: 4/27/15.
Accession Number: 20150427–5252.
Comments Due: 5 p.m. ET 5/18/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern

time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 27, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–10309 Filed 5–1–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9927–22–OECA]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first-served basis.

DATES: The NEJAC meeting will convene Wednesday, May 20, 2015, from 9:00 a.m. until 4:30 p.m.; and will reconvene on Thursday, May 21, 2015, from 9:00 a.m. to 5:00 p.m. All noted times are Pacific Standard Time.

One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, May 20, 2015, starting at 5:30 p.m. Pacific Standard Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 6:00 p.m., Pacific Standard Time, on Monday, May 11, 2015.

ADDRESSES: The NEJAC meeting will be held at the McMillin Event Center at the National Training Center, located at 2875 Dewey Road, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the meeting should be directed to Jasmin Muriel, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC1601A), Washington, DC 20460; by telephone at 202–564–4287; via email at *Muriel.Jasmin@epa.gov*; or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

Registration is required for all participants. Pre-registration by 6:00 p.m., Pacific Standard Time, on Monday, May 11, 2015, for all attendees is highly recommended. To register, visit *http://nejac-oct2014.eventbrite.com.* Please state whether you would like to be put on the list to provide oral public comment. Please specify whether you are submitting written comments before the 6:00 p.m., Monday, May 11, 2015, deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may make appropriate arrangements in writing using the above telephone number.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the EPA Administrator about areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

The meeting shall be used to discuss and receive comments about the nexus between sustainability and environmental justice. Specifically, the NEJAC will discuss these primary areas: (1) Goods Movement; (2) EJ 2020 Action Agenda; (3) EJ Best Practices for Local Government; and (4) Climate Change. In addition, the meeting will include updates from NEJAC work groups.

A. *Public Comment:* Individuals or groups making oral presentations during the public comment period will be limited to a total time of seven minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of an organization or group will be allowed to speak. If time permits, multiple representatives from the same organization can provide comment at the end of the session. In addition, those who did not sign up in advance to give public comment can sign up on site. The suggested format for written public comments is as follows: Name of Speaker; Name of Organization/Community; City and State; Email address; and a brief description of the concern and what you want the NEJAC to advise EPA to do. Written comments received by 6 p.m., Pacific Standard Time, on Monday May 11, 2015, will be included in the materials distributed to the members of the NEJAC. Written comments received after that date and time will be provided to the NEJAC as time allows. All information should be sent to the mailing address, email address, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

B. Information about Services for Individuals With Disabilities: For information about access or services for individuals with disabilities, please contact Jasmin Muriel, at (202) 564–4287 or via email at *Muriel.Jasmin@EPA.gov*. To request special accommodations for a disability, please contact Ms. Muriel at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: April 27, 2015.

Sherri P. White,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2015–10366 Filed 5–1–15; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice: 2015–6002]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request. Form Title: EIB 11–08, Application for Global Credit Express Revolving Line of Credit.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Global Credit Express Revolving Line of Credit is used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its Working Capital Guarantee and Direct

Loan Program. This form is used by small U.S. businesses with limited export experience. This program relies to a large extent on the exporter's qualifying score on the FICO (Fair Isaac Corporation) SBSS (Small Business Scoring Service). Therefore the financial and credit information needs are minimized. This is a request to renew an existing form. The only change is to enhance a question about company ownership so as to improve the quality of information derived from the question.

The form can be viewed at: *http://www.exim.gov/pub/pending/EIB11–08-Final.pdf.*

DATES: Comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* (EIB:11–08) or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 11–08, Application for Global Credit Express Revolving Line of Credit

OMB Number: 3048–0038.

Type of Review: Regular.

Need and Use: The Application for Global Credit Express Revolving Line of Credit is used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its Working Capital Guarantee and Direct Loan Program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 130.

Estimated Time per Respondent: 1.5 hours.

Annual Burden Hours: 195 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 195 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $8,287.5 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $9,945.

Bonita Jones-McNeil,

Records Management Division,

Office of the Chief Information Officer.

[FR Doc. 2015–10343 Filed 5–1–15; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice EIB–2015–0008]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088734XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before May 23, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter *EIB–2015–0008* under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2015–0008 on any attached document.

Reference: AP088734XX.

Purpose and Use:

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to Luxembourg.

Brief non-proprietary description of the anticipated use of the items being exported: To be used for air cargo services globally. To the extent that Ex-Im Bank is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Suppliers: The Boeing Company.

Obligor: Cargolux Airlines International S.A.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing 747 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Bonita Jones,

Program Analyst, Records Management.

[FR Doc. 2015–10251 Filed 5–1–15; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[EIB–2015–0010]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088976XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before May 24, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2015–0010 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2015–0010 on any attached document.

Reference: AP088976XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured commercial aircraft to China.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for cargo air service between China and other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: China Southern Airlines.

Guarantor(s): N./A.

Description of Items Being Exported:

Boeing 777 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Bonita Jones-McNeil,

Program Analyst, Records Management.

[FR Doc. 2015–10327 Filed 5–1–15; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice EIB–2015–0009]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088934XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before May 23, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2015–0009 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and *EIB–2015–0009* on any attached document.

Reference: AP088934XX.

Purpose And Use: Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured commercial aircraft to the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for passenger air service between the United Arab Emirates and other countries.

To the extent that Ex-Im Bank is reasonably aware, the items being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Suppliers: The Boeing Company.

Obligor: Emirates Airline.

Guarantor(s): N/A.

Description of Items Being Exported:

Boeing 777 aircraft.

Information on *Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Bonita Jones,

Program Analyst, Records Management.

[FR Doc. 2015–10250 Filed 5–1–15; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

[Notice 2015–08]

Filing Dates for the Illinois Special Elections in the 18th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Illinois has scheduled special elections on July 7, 2015, and September 10, 2015, to fill the U.S. House of Representative seat in the 18th Congressional District vacated by Representative Aaron Schock.

Committees required to file reports in connection with the Special Primary Election on July 7, 2015, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on September 10, 2015, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report and a Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Illinois Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on June 25, 2015; a 12-day Pre-General Report on August 29, 2015; and a Post-General Report on October 10, 2015. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on June 25, 2015. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2015 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Illinois Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Illinois Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Illinois Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,600 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

CALENDAR OF REPORTING DATES FOR ILLINOIS SPECIAL ELECTIONS

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Campaign Committees Involved in *Only* the Special Primary (07/07/15) Must File			
Pre-Primary	06/17/15	06/22/15	06/25/15
July Quarterly	06/30/15	07/15/15	07/15/15
Semi-Annual Filing Committees Involved in *Only* the Special Primary (07/07/15) Must File			
Pre-Primary	06/17/15	06/22/15	06/25/15
Mid-Year	06/30/15	07/31/15	07/31/15
Quarterly Filing Campaign Committees Involved in Both the Special Primary (07/07/15) and Special General (09/10/15) Must File			
Pre-Primary	06/17/15	06/22/15	06/25/15
July Quarterly	06/30/15	07/15/15	07/15/15
Pre-General	08/21/15	08/26/15	[2] 08/29/15
Post-General	09/30/15	10/10/15	[2] 10/10/15
October Quarterly	—WAIVED—		
Year-End	12/31/15	01/31/16	[2] 01/31/16
Semi-Annual Filing Committees Involved in Both the Special Primary (07/07/15) and Special General (09/10/15) Must File			
Pre-Primary	06/17/15	06/22/15	06/25/15
Mid-Year	06/30/15	07/31/15	07/31/15
Pre-General	08/21/15	08/26/15	[2] 08/29/15
Post-General	09/30/15	10/10/15	[2] 10/10/15
Year-End	12/31/15	01/31/16	[2] 01/31/16
Quarterly Filing Campaign Committees Involved in *Only* the Special General (09/10/15) Must File			
Pre-General	08/21/15	08/26/15	[2] 08/29/15
Post-General	09/30/15	10/10/15	[2] 10/10/15
October Quarterly	—WAIVED—		
Year-End	12/31/15	01/31/16	[2] 01/31/16
Semi-Annual Filing Committees Involved in *Only* the Special General (09/10/15) Must File			
Pre-General	08/21/15	08/26/15	[2] 08/29/15
Post-General	09/30/15	10/10/15	[2] 10/10/15
Year-End	12/31/15	01/31/16	[2] 01/31/16

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail or electronically, must be received before the Commission's close of business on the last business day before the deadline.

Dated: April 27, 2015.

On behalf of the Commission.

Ann M. Ravel,

Chair, Federal Election Commission.

[FR Doc. 2015–10350 Filed 5–1–15; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 2015.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Independence Bancshares, Inc.,* Greenville, South Carolina; to acquire MPIB Holdings, LLC, Darien, Connecticut, and thereby engage in data processing activities, pursuant to section 225.28(b)(14)(i).

Board of Governors of the Federal Reserve System, April 29, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–10344 Filed 5–1–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board, Acting Clearance Officer—Mark Tokarski—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

Agency form number: FR H–4.

OMB control number: 7100–0250.

Frequency: Event-generated.

Reporters: State member banks (SMBs) and nonbank subsidiaries of bank holding companies (BHCs).

Estimated annual reporting hours: SMBs, 31,820 hours; nonbank subsidiaries of BHCs, 11,813 hours.

Estimated average hours per response: SMBs, 0.25; nonbank subsidiaries of BHCs, 0.25.

Number of respondents: SMBs, 860; nonbank subsidiaries of BHCs, 613.

General description of report: The recordkeeping requirements of this information collection are mandatory (12 U.S.C. 3339). Since the Federal Reserve does not collect this information, confidentiality is not generally an issue. However, if the Federal Reserve were to collect a copy of the appraisal report during an examination, the documents could be exempt from disclosure under FOIA (5 U.S.C 552(b)(4) and (b)(8)).

Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires SMBs and BHCs with credit-extending nonbank subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. SMBs and BHCs with credit-extending nonbank subsidiaries are expected to maintain records that demonstrate that appraisals used in their real estate-related lending activities comply with these regulatory requirements. There is no formal reporting form.

Current Actions: On February 12, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 7866) requesting public comment for 60 days on the extension, without revision, of the FR H–4. The comment period for this notice expired on April 13, 2015. The Federal Reserve did not receive any comments. The information collection will be extended for three years, without revision, as proposed.

Final approval, under OMB delegated authority to implement the following information collection:

Report title: Federal Reserve Board Public Web Site Usability Survey.

Agency form number: FR 3076.

OMB control number: 7100—to be assigned.

Frequency: On occasion.

Reporters: Consumers, media, economists, financial institutions, nonprofits, community development organizations, consumer groups, state or local agencies, and researchers from academic, government, policy and other institutions.

Estimated annual reporting hours: Surveys, 300 hours; and Focus Groups, 120 hours.

Estimated average hours per response: Surveys, 0.25 hours; and Focus Groups, 1.50 hours.

Number of respondents: Surveys, 100; and Focus Groups, 20.

General description of report: This information collection is generally authorized under section 2B of the Federal Reserve Act, as amended, that requires the Board to provide certain reports, audits, and other information that ''the Board reasonably believes is necessary or helpful to the public in understating the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks''

(12 U.S.C. 225b(c)). In addition, the Board uses its Web site to provide the public information about a variety of other matters, including information about the Board, its actions, and the economy. The responses to this survey will help the Board to determine how effective its communications are as the Board strives to fulfill its statutory mission to ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates'' (12 U.S.C. 225a). Participation in the FR 3076 would be voluntary and the information collected on these surveys is not considered confidential. Thus, no issue of confidentiality arises.

Abstract: The Board would use the FR 3076 survey to obtain feedback from the public users of the Federal Reserve Board's public Web site, social media, outreach, and communication responsibilities. This collection would seek input from users or potential users to understand their interests and needs; to help make informed decisions concerning content, design, and dissemination strategies; to gauge public awareness of its offerings and resources; and to assess the effectiveness of its communications with various audiences.

The FR 3076 would be used to gather qualitative and quantitative information directly from users or potential users of the Board's Web site such as the public, the Congress, other government agencies, economic educators, economists, financial institutions, financial literacy groups, and community development groups and more.

Web pages may include press releases, data releases and download, reports, supervision manuals, brochures, new Web pages, audio, video, and use of social media. Information gathered may also include general input on users' interests and needs, feedback on Web site navigation and layout, distribution channels, or other factors which may affect the ability of users to locate and access content online.

Qualitative surveys include data gathering methods such as focus groups and individual interviews. Quantitative surveys include surveys conducted online or via mobile device, by phone or by mail, emails, or a combination of these methods. The Board may choose to contract with an outside vendor to conduct focus groups, interviews, or surveys; or the Board may choose to collect the data directly.

As FederalReserve.gov continues to evolve, the Board may seek input from users or potential users of Board's public Web site on questions such as:

- Did you find the content and layout relevant and of value?
- How did you find the content you were looking for?
- Was the navigation useful?
- How did you learn about the content?
- How did you access the content? (*e.g.:* paper copy distributed at an event, online, or mobile device). If online or through a mobile device, was the document printed, viewed on a tablet, or on a computer screen?
- What suggestions do you have for improving the format and appearance of online presentation? (*e.g.:* readability—font size, charts, and graphs; organization of information; and navigating—indexing, search tools, and links).
- What other information would be of value to enhance the online tool or information?

Participation in the FR 3076 would be voluntary.

Current Actions: On February 12, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 7866) requesting public comment for 60 days on the implementation of the FR 3076. The comment period for this notice expired on April 13, 2015. The Federal Reserve did not receive any comments. The information collection will be implemented, as proposed.

Board of Governors of the Federal Reserve System, April 28, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–10280 Filed 5–1–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0163]; [Docket 2015–0053; Sequence 5]

Submission to OMB for Review; Federal Acquisition Regulation; Small Business Size Representation

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request for approval of a previously approved information collection requirement regarding small business size representation. A notice was published in the **Federal Register** at 80 FR 8651 on February 18, 2015. No comments were received.

DATES: Submit comments on or before: June 3, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0163, Small Business Size Representation, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB Control number 9000–0163. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0163, Small Business Size Representation''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0163, Small Business Size Representation'' on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 9000–0163, Small Business Size Representation.

Instructions: Please submit comments only and cite ''Information Collection 9000–0163, Small Business Size Representation,'' in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Government-wide Policy, contact via telephone 703–605–2868 or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 19.301 and the FAR clause at 52.219–28, Post-Award Small Business Program Rerepresentation, implement the Small Business Administration's (SBA's) regulation at 13 CFR 121.404(g), requiring that a concern that initially represented itself as small at the time of its initial offer must recertify its status as a small business under the following circumstances:

• Within thirty days of an approved contract novation;

• Within thirty days in the case of a merger or acquisition, where contract novation is not required; or

• Within 120 days prior to the end of the fifth year of a contract, and no more than 120 days prior to the exercise of any option thereafter.

The implementation of SBA's regulation in FAR 19.301 and the FAR clause at 52.219–28 require that contractors rerepresent size status by updating their representations at the prime contract level in the Representations and Certifications section of the System for Award Management (SAM) and notifying the contracting officer that it has made the required update.

The purpose of implementing small business rerepresentations in the FAR is to ensure that small business size status is accurately represented and reported over the life of long-term contracts. The FAR also provides for provisions designed to ensure more accurate reporting of size status for contracts that are novated, merged or acquired by another business. This information is used by the SBA, Congress, Federal agencies and the general public for various reasons such as determining if agencies are meeting statutory goals, set-aside determinations, and market research.

B. Annual Reporting Burden

Based on information from Federal Procurement Data System (FPDS) regarding rerepresentation modifications, a downward adjustment is being made to the number of respondents. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 77 FR 30265, on May 22, 2012.

Respondents: 1,700.

Responses Per Respondent: 1.

Total Number of Responses: 1,700.

Hours Per Response: 0.5.

Total Burden Hours: 850.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0163, Small Business Size Representation, in all correspondence.

Dated: April 28, 2015.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–10361 Filed 5–1–15; 8:45 am]

BILLING CODE 6820–EP–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 105042015–1111–02]

Council Member Summary Notice of Application Process for Council-Selected Restoration Component Projects and Programs

AGENCY: Gulf Coast Ecosystem Restoration Council (Council).

ACTION: Notice.

SUMMARY: This notice explains the two-phase submission and application process for RESTORE Council members to receive funding under the Council-Selected Restoration Component of the RESTORE Act.

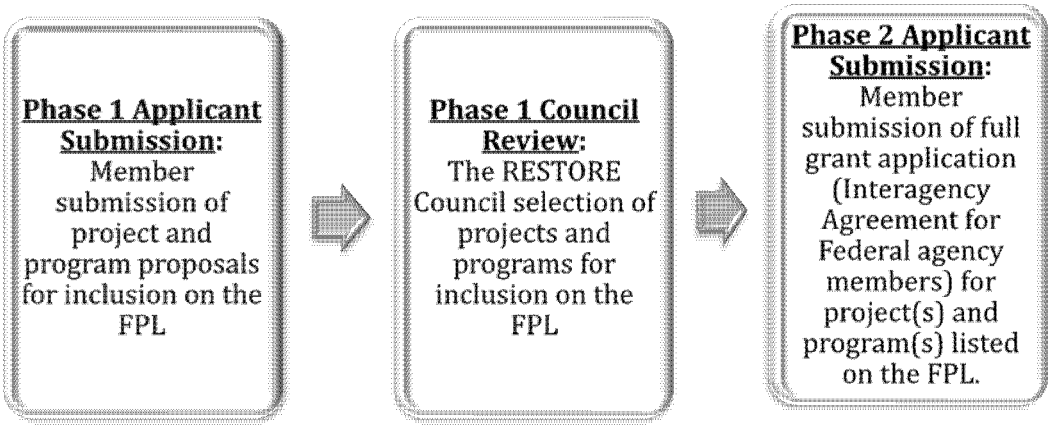
DATES: These provisions are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Pleffner, Council, telephone number: 813–995–2025.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 1321(t)(2) of the Resource and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), the Gulf Coast Ecosystem Restoration Council (Council) will fund and implement projects and programs to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region pursuant to a published Funded *Priorities List (FPL).*[1] The Council published the ''Council Member Proposal Submission Guidelines for Comprehensive Plan Funded Priorities List of Projects and Programs'' on its Web site on August 21, 2014. This document contains overarching submission guidelines for Council member agencies and States to submit projects and programs for possible inclusion on the FPL. The Council will periodically request proposals from its eleven State and Federal members in order to develop further FPLs.

To receive funding under the Council-Selected Restoration Component of the RESTORE Act, Council members must take part in a two-phase submission and application process. Both phases of the submission and application process must be completed before a member will receive an official award from the Council and be able to receive grant funding.

[1] The FPL will be a supplement to the previously published Initial Comprehensive Plan.



In the first phase, projects and programs must be selected for inclusion on the FPL. *The Council members are the only entities eligible to submit proposals for the FPL.* The Council will select projects and programs for inclusion in the FPL using the review and selection process described in the ''Council Member Proposal Submission Guidelines for Comprehensive Plan Funded Priorities List of Projects and Programs.'' The Council will then publish the draft FPL, accept and respond to public comments, and publish the final FPL as an addendum to the Initial Comprehensive Plan.

After publication of the final FPL, the second phase of the application process begins by requiring the submission of a full grant application or interagency agreement for each individual project or program by the Council member who is designated as the primary recipient. This second phase, the grant application phase, is not competitive. After a project or program has been selected under phase 1, the actual grant awards (with State Council members) or interagency agreements (with Federal agency Council members) are entered into through the administrative process. *The Council members are the only entities eligible to enter into grant awards or interagency agreements.* All State Council member projects or programs selected for funding under the FPL must apply for a grant to implement the project or program described in the proposal. All Federal agency Council member projects or proposals selected for funding under the FPL must work with the Council to create an Interagency Agreement.

Detailed information about the grant application phase process will be published at a later date. Example forms and documents that may be required in the full grant application package are listed below:

- Standard Forms (SF–424 family);
- Council-specific forms;
- Detailed Project Narrative;
- Detailed Budget Narrative;
- Organizational Risk Assessment;
- Council and Government-wide Certifications; and
- Environmental Compliance Documentation, as applicable.

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2015–10357 Filed 5–1–15; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), in concurrence with and the Health Resources and Services Administration (HRSA), announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–5:30 p.m., May 20, 2015 (CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC) meeting).

9 a.m.–4:30 p.m., May 21, 2015 (CHAC and the Presidential Advisory Council on HIV/AIDS (PACHA) joint meeting).

Place: The CHAC meeting will be held at CDC Corporate Square, Building 8, Conference Room 1–ABC, Corporate Boulevard, Atlanta, Georgia 30329; telephone (404) 639–8317. The meeting is also accessible by teleconference: Local (Atlanta, Georgia) number (404) 553–8912, Conference ID: 8317483; Toll-free number +1 (855) 348–8390, Conference ID: 8317483.

The CHAC/PACHA joint meeting will be held at the W Hotel Atlanta Downtown, 45 Ivan Allen Jr. Boulevard, Salons 5 and 6, Atlanta, Georgia 30308; telephone (404) 582–5800.

Status: Both of the meetings are open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS, Viral Hepatitis and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS, Viral Hepatitis and other STDs.

Matters for Discussion: Agenda items include: (1) Role of STD clinics in Pre-Exposure Prophylaxis (PrEP); (2) Addressing Hepatitis C and HIV among people who inject drugs (PWID); (3) Update from viral hepatitis workgroup; and (4) considerations for the update of the National HIV/AIDS Strategy (joint meeting with PACHA).

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Margie Scott-Cseh, CDC, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333; telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–10306 Filed 5–1–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-15–15ADW; Docket No. CDC–2015–0025]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection request entitled ''Employer Perspectives of an Insurer-Sponsored Wellness Grant''. This collection is a part of an employer study to understand the impact of integrating wellness programs with traditional occupational safety and health (OSH) programs.

DATES: Written comments must be received on or before July 6, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0025 by any of the following methods:

Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

*Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Employer Perspectives of an Insurer-Sponsored Wellness Grant—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH proposes to conduct a study among employers in Ohio insured by the Ohio Bureau of Workers' Compensation (OHBWC) to (1) assess the effectiveness and cost-benefit of an intervention that funds workplace wellness programs and (2) understand the impact of integrating wellness programs with traditional occupational safety and health (OSH) programs.

Work-related injuries and illnesses are common among US workers and result in pain, disability, and substantial cost to workers and employers. A recent, comprehensive analysis of the economic burden of work-related injuries and illnesses estimated that in 2007 alone medical and indirect costs for work-related injuries and illnesses were $250 billion. According to the Bureau of Labor Statistics there were 4,609 occupational fatalities in 2011 and approximately 2 million work-related injuries and illnesses that involved some lost work in 2010.

Workers' health is affected not only by workplace safety and health hazards, but also workers' own health behaviors. Reflecting this, two different, yet, complementary approaches exist in the workplace: OSH programs and wellness programs. Both types of programs aim to improve worker health and reduce costs to employers, workers' compensation (WC) insurers, and society. Since 2004, NIOSH has advocated an approach that coordinates wellness programs with OSH programs because emerging evidence suggests that integrating these two fields may have a synergistic effect on worker safety and health.

NIOSH has established an intramural program for protecting and promoting Total Worker Health™. The NIOSH Total Worker Health™ Cross-Sector

Program promotes the integration of health and safety protection with health and wellness promotion through research, interventions, partnerships, and capacity building to meet the needs of the 21st century workforce. The proposed project addresses three priority goals of the NIOSH Total Worker Health™ Program: (1) Investigate the costs/benefits associated with comprehensive, coordinated work-based health protection/health promotion interventions; (2) improve the understanding of how the work environment influences the effectiveness of health programs and identify opportunities for workplace interventions to prevent, control, recognize and manage common chronic conditions; and (3) conduct scientific research that more holistically investigates organizational and worker health and safety outcomes associated with emerging issues and addresses gaps in knowledge in the health protection/health promotion field.

There is a need for research to demonstrate a 'business case' for both wellness programs and integrated OSH-wellness programs and identify OSH organizational and management policies, programs and practices that effectively reduce work-related injuries, illnesses, disabilities and WC costs. To date small employers have been largely ignored in these areas and many studies have focused on the manufacturing industry. Real-world examples of effective interventions that apply to employers of all sizes and industries will ultimately improve workers' health and safety.

For the current study, NIOSH and OHBWC are collaborating on a project to determine the effectiveness and economic return of the Workplace Wellness Grant Program (WWGP) and to understand the impact of integrating of wellness with traditional OSH programs. In early 2012 OHBWC took steps to integrate wellness and OSH programs by launching the WWGP, in which an estimated 400 (currently 321) employers and 13,000 employees will be provided a total of $4 million in funds over four years to implement wellness programs.

The majority of the study aims will be accomplished through secondary analysis of pre- and post-intervention data being collected by OHBWC and shared with NIOSH. For the overall study, data for participating employers will include aggregate health risk appraisal data; aggregate biometric data; turnover data; health care utilization costs; information about occupational safety and health, wellness, and integrated occupational safety and health-wellness program elements; OHBWC WWGP expense records; yearly WC claims and cost data; data that details employer participation in other OHBWC programs; industry codes, and employer size. A sample of no more than 50 employers will be selected among grantees for 1–2 brief phone calls to confirm responses on an annual survey administered by OHBWC.

In addition, NIOSH will supplement the cost data extracted from existing sources with information collected through in-depth, semi-structured interviews with no more than 25, randomly selected, participating employers. Data gathered from these employer interviews are critical to compute ratios of total savings to total costs for the grant-supported wellness programs from the perspective of the participating employers.

NIOSH will ask a series of questions that will be used to estimate direct and indirect costs that were not directly funded by the WWGP during and after the grant funding period. This will be accomplished by collecting as detailed information as possible about the employer's wellness program and occupational and safety program costs. Topics will include questions about: The timeline and confirmation of grant funding (4 questions), non-grant funds used for wellness program costs after receiving the first grant (5 questions), non-grant funds used for wellness program costs before receiving the first grant (7 questions), time spent on wellness program after receiving the grant (3 questions), time spent on wellness program before receiving the grant (7 questions), other questions about the people planning and running the wellness program (2 or 4 questions), work time spent by employees for wellness activities (6 to 11 questions), changes to OSH plan and hazards after receiving the grant (8 to 13 questions), and other questions about their wellness program (3 to 5 questions).

The results of these interview-supplemented case studies will be used to estimate the proportion by which total employer costs exceed the cost of the primary wellness program vendor, as well as the proportion of these costs attributable to establishing the program in the first year versus operating the program in subsequent years. These estimates will be applied to generate total employer costs for all of the WWGP recipients, with sensitivity analysis based on the observed variability of employer costs in the case studies.

If the WWGP is effective at improving worker health, reducing WC claims and demonstrating a positive economic return, then other employers and insurance carriers may develop similar programs and drive the optimization of integrated OSH-wellness approaches. NIOSH expects to complete data collection in 2017.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Wellness Program Coordinators	Employer interviews on cost of wellness and occupational safety and health program.	25	1	2	50
Occupational Safety and Health Specialists.	Employer interviews on cost of wellness and occupational safety and health program.	25	1	2	50
The person in charge of the employer's wellness program.	Annual case study verification interview.	100	1	30/60	50
Total					150

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–10286 Filed 5–1–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund, CCDF; Reporting Improper Payments; Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the third 3-year cycle of case record reviews to meet the requirements for reporting under IPIA. The current forms and instructions expire September 30, 2015. OCC is submitting the information collection for renewal clearance with minor changes. Responders will now have additional guidance and clarification in the instructions and errors have been corrected. New language incorporates requirements from the 2014 Child Care and Development Fund Block Grant Act passed in November 2014.

Respondents: State grantees, the District of Columbia, and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1,802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1,248

Estimated Total Annual Burden Hours: 43,613.36.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV. Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–10296 Filed 5–1–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0785]

Determination of Regulatory Review Period for Purposes of Patent Extension; RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is

granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM. RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM is indicated for the endovascular repair of fusiform aneurysms and saccular aneurysms/penetrating atherosclerotic ulcers in the descending thoracic aorta in patients having appropriate anatomy. Subsequent to this approval, the USPTO received a patent term restoration application for the RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM (U.S. Patent No. 8,062,345 B2) from Bolton Medical Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 18, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of the RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM is 2,852 days. Of this time, 2,529 days occurred during the testing phase of the regulatory review period, while 323 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* December 2, 2004. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on December 3, 2004. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on December 2, 2004, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* November 4, 2011. FDA has verified the applicant's claim that the premarket approval application (PMA) for the RELAY THORACIC STENT–GRAFT WITH PLUS DELIVERY SYSTEM (PMA P110038) was initially submitted November 4, 2011.

3. *The date the application was approved:* September 21, 2012. FDA has verified the applicant's claim that PMA P110038 was approved on September 21, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 225 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10338 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–E–1299 and FDA–2013–E–1302]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAMERON HEALTH S–ICD SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CAMERON HEALTH S–ICD SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, Rm. 3180, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical

investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device CAMERON HEALTH S–ICD SYSTEM. CAMERON HEALTH S–ICD SYSTEM is indicated to provide defibrillation therapy for the treatment of life-threatening ventricular tachyarrhythmias in patients who do not have symptomatic bradycardia, incessant ventricular tachycardia, or spontaneous, frequently recurring ventricular tachycardia that is reliably terminated with antitachycardia pacing. Subsequent to this approval, the USPTO received patent term restoration applications for CAMERON HEALTH S–ICD SYSTEM (U.S. Patent Nos. 6,856,835 and 7,149,575) from Cameron Health Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 18, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of CAMERON HEALTH S–ICD SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CAMERON HEALTH S–ICD SYSTEM is 1,024 days. Of this time, 743 days occurred during the testing phase of the regulatory review period, while 281 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* December 11, 2009. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C act for human tests to begin became effective December 11, 2009.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 23, 2011. FDA has verified the applicant's claim that the premarket approval application (PMA) for CAMERON HEALTH S–ICD SYSTEM (PMA P110042) was initially submitted December 23, 2011.

3. *The date the application was approved:* September 28, 2012. FDA has verified the applicant's claim that PMA P110042 was approved on September 28, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 651 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10334 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0154]

Determination of Regulatory Review Period for Purposes of Patent Extension; NESINA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NESINA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an

application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product NESINA (alogliptin benzoate). NESINA is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for NESINA (U.S. Patent No. 8,173,663) from Takeda Pharmaceuticals U.S.A., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of NESINA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NESINA is 3,021 days. Of this time, 1,164 days occurred during the testing phase of the regulatory review period, while 1,857 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* October 20, 2004. The applicant claims October 19, 2004, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 20, 2004, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 27, 2007. FDA has verified the applicant's claim that the new drug application (NDA) for NESINA (NDA 22–271) was submitted on December 27, 2007.

3. *The date the application was approved:* January 25, 2013. FDA has verified the applicant's claim that NDA 22–271 was approved on January 25, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 264 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10337 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0074]

Determination of Regulatory Review Period for Purposes of Patent Extension; BOSULIF

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BOSULIF and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product BOSULIF (bosutinib monohydrate). BOSULIF is indicated for treatment of adult patients with chronic, accelerated, or blast phase Ph+ chronic myelogenous leukemia with resistance or intolerance to prior therapy. Subsequent to this approval, the USPTO received a patent term restoration application for BOSULIF (U.S. Patent No. RE42376) from Wyeth Holdings Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 26, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BOSULIF represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BOSULIF is 3,032 days. Of this time, 2,739 days occurred during the testing phase of the regulatory review period, while 293 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 19, 2004. The applicant claims May 16, 2004, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 19, 2004, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* November 17, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for BOSULIF (NDA 203–341) was submitted on November 17, 2011.

3. *The date the application was approved:* September 4, 2012. FDA has verified the applicant's claim that NDA 203–341 was approved on September 4, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,664 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10333 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; KAZANO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KAZANO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product KAZANO (alogliptin benzoate and metformin hydrochloride). KAZANO is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for KAZANO (U.S. Patent No. 8,288,539) from Takeda Pharmaceutical Company Limited, and the USPTO requested FDA's assistance in determining this

patent's eligibility for patent term restoration. In a letter dated May 2, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of KAZANO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KAZANO is 1,365 days. Of this time, 934 days occurred during the testing phase of the regulatory review period, while 431 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 3, 2009. The applicant claims May 4, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 3, 2009, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* November 22, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for KAZANO (NDA 203–414) was submitted on November 22, 2011.

3. *The date the application was approved:* January 25, 2013. FDA has verified the applicant's claim that NDA 203–414 was approved on January 25, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 102 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10335 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–E–0476 and FDA–2013–E–0654]

Determination of Regulatory Review Period for Purposes of Patent Extension; TUDORZA PRESSAIR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TUDORZA PRESSAIR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product TUDORZA PRESSAIR (aclidinium bromide). TUDORZA PRESSAIR is indicated for the long-term maintenance treatment of bronchospasm associated with chronic obstructive pulmonary disease, including chronic bronchitis and emphysema. Subsequent to this approval, the USPTO received patent term restoration applications for TUDORZA PRESSAIR (U.S. Patent Nos. 6,750,226 and 7,078,412) from Almiral, S.A., and the USPTO requested FDA's assistance in determining the patents eligibilities for patent term restoration. In a letter dated July 16, 2013, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of TUDORZA PRESSAIR represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO

requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TUDORZA PRESSAIR is 3,136 days. Of this time, 2,739 days occurred during the testing phase of the regulatory review period, while 397 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 24, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 24, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* June 23, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for TUDORZA PRESSAIR (NDA 202–450) was submitted on June 23, 2011.

3. *The date the application was approved:* July 23, 2012. FDA has verified the applicant's claim that NDA 202–450 was approved on July 23, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,679 or 1,298 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 2, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10336 Filed 5–1–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education (COGME).

Dates and Times: May 21, 2015 (10:00 a.m.–4:00 p.m. EST).

Place: Webinar, and Conference Call Format.

Status: The meeting will be open to the public.

Purpose: The COGME provides advice and recommendations to the Secretary of the Department of Health and Human Services and to Congress on a range of issues including the supply and distribution of physicians in the United States, current and future physician shortages or excesses, issues relating to foreign medical school graduates, the nature and financing of medical education training, and the development of performance measures and longitudinal evaluation of medical education programs. The COGME members will continue their discussion on Graduate Medical Education (GME) innovations.

Agenda: The COGME agenda includes an opportunity for members to continue their discussion on Graduate Medical Education (GME) innovations including GME architecture, reform, and financing.

The official agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/cogme/index.html*

SUPPLEMENTARY INFORMATION: Members of the public will have the opportunity to provide comments. Requests to make oral comments or provide written comments to the COGME should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate on the conference call or webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Interested parties should refer to the meeting subject as the HRSA Council on Graduate Medical Education.

The conference call-in number is: 888–566–5974. The passcode is: 4439136.

The webinar link is *https://hrsa.connectsolutions.com/bhw_cogmemay2015/*.

Contact: Anyone requesting information regarding the COGME should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, Parklawn Building, Room 12C–05, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–10354 Filed 5–1–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than June 3, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests

submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 594–4306.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Partnerships for Care (P4C) Supplemental Funding Progress Reports

OMB No. 0915–xxxx—New

Abstract: Partnerships for Care (P4C): Health Departments and Health Centers Collaborating to Improve HIV Health Outcomes is a 3-year partnership cross-HHS project. The activities described in this notice were funded in part by HRSA through the Secretary's Minority AIDS Initiative Fund, established by annual appropriations acts (most recently, the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, Division G, title II) and the Community Health Center Fund established by section 10503 of the Affordable Care Act, Public Law 111–148, as amended. The goals of the P4C project are to build sustainable partnerships between HRSA-funded health centers and CDC-funded state health departments (including Massachusetts, New York, Maryland, and Florida) to support expanded HIV service delivery in communities highly impacted by HIV, especially among racial/ethnic minorities. State health departments and health centers will work together to increase the identification of undiagnosed HIV infection, establish new access points for HIV care and treatment, and improve HIV outcomes along the continuum of care for people living with HIV (PLWH) (see P4C fact sheet at *http://www.cdc.gov/hiv/prevention/demonstration/p4c/index.html* and HHS press release at *http://www.hhs.gov/news/press/2014pres/07/20140715a.html*). Eligible health centers (22 in 4 states) will receive up to $500,000 annually in HRSA supplemental funding (totaling $33M across the 3-year project period) to integrate high-quality, comprehensive HIV services into their primary care programs; and to work in collaboration with their state health department to (1) identify people with undiagnosed HIV infection, (2) link newly diagnosed individuals to care, and (3) retain patients living with HIV in care. Health centers must implement activities in five focus areas, including workforce development, infrastructure development, HIV service delivery, partnership development, and quality improvement and evaluation. Health centers must demonstrate progress toward implementing all required P4C activities and improving health care outcomes across the HIV care continuum (see *http://aids.gov/federal-resources/policies/care-continuum/*).

Need and Proposed Use of the Information: HRSA/Bureau of Primary Healthcare (BPHC) proposes standardized data collection and reporting through submission of five progress reports by the 22 health centers participating in the 3-year P4C project to achieve the following purposes:

1. Ensure appropriate stewardship of federal funds.
2. Support HHS efforts to streamline HIV data collection and reporting.
3. Assess health center progress in implementing approved work plans and meeting other P4C goals and objectives.
4. Assess health center progress in improving HIV outcomes across the HIV care continuum.
5. Support health center use of patient data to improve quality of HIV care.
6. Identify training and technical assistance needs among participating health centers.
7. Support identification and dissemination of effective models and promising practices for the integration of HIV services into primary care.

Proposed data collection closely aligns with (1) core HIV indicators established by HHS (see *http://blog.aids.gov/2012/08/secretary-sebelius-approves-indicators-for-monitoring-hhs-funded-hiv-services.html*), (2) measures endorsed by the National Quality Forum (see *http://www.qualityforum.org/News_And_Resources/Press_Releases/2013/NQF_Endorses_Infectious_Disease_Measures.aspx*), (3) performance measures used by the Ryan White HIV/AIDS Program (see *http://hab.hrsa.gov/deliverhivaidscare/habperformmeasures.html*), (4) the Health Center Program's Uniform Data System (see *http://bphc.hrsa.gov/healthcenterdatastatistics/index.html#whatisuds*), and (5) P4C project requirements. Specifically, HRSA/BPHC proposes submission of two progress reports each year by participating health centers to include aggregate, HIV-related, patient data (quantitative) and other information regarding implementation of approved work plans and budgets (narrative).

Likely Respondents: Health Center Program grantees receiving supplemental awards under the P4C project (22 total).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below. As health centers develop reporting proficiencies and advance from initial start-up activities to establishing routine data abstraction methods for the new outcome measures, it is expected that the annualized burden will decrease by 20% each year.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Implementation Progress Report	22	1	22	5	110
Outcomes Progress Report	22	1	22	25	550
Total	22		44		660

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–10355 Filed 5–1–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice for Request for Nominations

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill at least 16 vacancies on the National Advisory Council on Nurse Education and Practice (NACNEP).

DATES: The Agency must receive nominations on or before July 15, 2015.

ADDRESSES: All nominations are to be submitted either by email to Kristen Hansen, Acting Designated Federal Official, NACNEP, at *nacnep@hrsa.gov* or by mail to Kristen Hansen, Division of Nursing and Public Health, Bureau of Health Workforce, Health Resources and Administration, Parklawn Building, Room 9–89, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kristen Hansen, Division of Nursing and Public Health, Bureau of Health Workforce, by email at *nacnep@hrsa.gov* or telephone at (301) 443–2796. A copy of the current committee membership, charter, and reports can be obtained by accessing the NACNEP Web site (*http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/index.html*).

SUPPLEMENTARY INFORMATION: Under the authorities that established the NACNEP and the Federal Advisory Committee Act, HRSA is requesting nominations for at least 16 new committee members. The NACNEP provides advice and recommendations to the Secretary and Congress in preparation of general regulations and concerning policy matters arising in the administration of Title VIII, including the range of issues related to nurse workforce education and practice improvement. Annually, the NACNEP prepares and submits to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the council, including findings and recommendations made by the NACNEP concerning the activities under Title VIII.

The Department of Health and Human Services is requesting at least 16 nominations for members of the NACNEP from leading authorities in the various fields of nursing, higher and secondary education, and associate degree schools of nursing; and from representatives of advanced education nursing groups (such as nurse practitioners, nurse midwives, and nurse anesthetists); from hospitals and other institutions and organizations which provide nursing services; from practicing professional nurses; from the general public; and full-time students enrolled in schools of nursing. The majority of NACNEP members shall be nurses.

HRSA has special interest in the legislative requirements of having a fair balance between the nursing profession with a broad geographic representation of members, a balance between urban and rural members, and the adequate representation of minorities. HRSA encourages nominations from qualified candidates from these groups as well as individuals with disabilities and veterans.

Interested persons may nominate one or more qualified persons for membership. Self-nominations are accepted. Nominations must be typewritten. The following information should be included in the package of materials submitted for each individual being nominated: (1) a letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes that qualify the nominee for service in this capacity), a statement that the nominee is willing to serve as a member of the council and appears to have no conflict of interest that would preclude this council membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, research grants, and/or contracts to permit an evaluation of possible sources of conflicts of interest; (2) the nominator's name, address, and daytime telephone number; the home/or work address and telephone number; and the email address of the individual being nominated; (3) a current copy of the nominee's curriculum vitae; and (4) a statement of interest from the nominee to support experience working with Title VIII nursing programs, expertise in the field, and a personal desire in participating on the NACNEP.

Members will receive a stipend for each official meeting day of the NACNEP, as well as per diem and travel expenses as authorized by section 5 U.S.C. 5703 for persons employed intermittently in government service.

Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation and cultural, religious, or socioeconomic status. Qualified candidates will be invited to serve up to a 4-year term.

Authority: The National Advisory Council on Nurse Education and Practice is in accordance with the provisions of 42 United States Code (U.S.C.) 297t; section 851 of the Public Health Service Act, as amended. The Council is governed by provisions of Pub. L. 92–463, which sets forth standards for the formation and use of advisory committees.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–10356 Filed 5–1–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-Term Training to Promote Diversity in Health Research.

Date: May 28, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: April 28, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10271 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Determining the Genetic and Diagnostic Markers of Acute Renal Allograft Rejection (K24).

Date: May 26, 2015.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 5601 Fisher Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC9823, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Innovative Technologies for Differential Diagnosis of Acute Febrile Illnesses (R21/R33).

Date: May 27, 2015.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fisher Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 28, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10274 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Performance Measures of Multiple Chronic Conditions (MCC).

Date: May 28, 2015.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, mikhaili@mail.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel Polyphenols and Alzheimer's Disease.

Date: June 11, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, mikhaili@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10278 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 18–19, 2015.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (301) 402–5807, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: *April 28, 2015.*

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10270 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Novel Furoquinolinediones as Inhibitors of TDP2 and Their Potential Use to Treat Cancer

Description of Technology: The invention relates to novel Furoquinolinediones derivatives and their ability to inhibit the enzyme tyrosyl-DNA phosphodiesterase 2 (TDP2), and therefore to serve as anti-cancer agents. Furthermore, these compounds can be used in combination with topoisomerase II (Top2) inhibitors, such as etoposide or doxorubicin, to more effectively kill cancer cells in a synergistic fashion.

Pharmaceutical compositions containing these novel Furoquinolinediones and methods of treatment comprising administering of such compositions are disclosed in the invention.

Potential Commercial Applications: Furoquinolinediones derivatives can potentially be utilized for cancer treatment either as stand alone or in combination with other drugs such as Top2 inhibitors.

Competitive Advantages: Combination therapies based on the association of a TDP2 and a Top2 inhibitor because of their synergistic effect should allow the decrease of the effective dosage. Their therapeutic benefit should be observed at non-toxic concentrations for normal cells as it has already been demonstrated for PARP inhibitors in BRCA-deficient tumors.

Development Stage: In vitro data available

Inventors: Christophe R. Marchand, Likun An, Yves G. Pommier (all of NCI)

Intellectual Property: HHS Reference No. E–275–2014/0—US Provisional Application No. 62/100,968 filed January 8, 2015

Licensing Contact: Kevin Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*

Transgenic Mouse Model of Human Open Angle Glaucoma

Description of Technology: Glaucoma is a group of chronic neurodegenerative disorders, which is characterized by progressive loss of retinal ganglion cells (RGC) and results in irreversible damage to optic nerve and thereby loss of vision. Primary open angle glaucoma (POAG) is the most common form of glaucoma; mutations in *MYOC* gene are the most common genetically defined cause of POAG. As such, *MYOC* transgenic mouse models are very useful to study *MYOC*-associated glaucoma and to develop therapies to treat these diseases.

The NIH inventors generated a new *MYOC* mouse model carrying a mutant human *MYOC* (*Y437H*) gene. The *Y437H* mutation is associated with a severe form of glaucoma among the identified *MYOC* mutations.

Potential Commercial Applications:

- Research tools
- Drug development for glaucoma

Competitive Advantages: The new transgenic mouse model carries a mutation associated with a severe form of glaucoma in humans.

Development Stage: Prototype.

Inventors: Stanislav Tomarev (NEI), Yu Zhou (former NEI), Oleg Grinchuk (former NEI).

Publications:

1. Zhou Y, et al. Transgenic mice expressing the Tyr437His mutant of human myocilin protein develop glaucoma. Invest Ophthalmol Vis Sci. 2008 May;49(5):1932–9. [PMID 18436825]

2. Joe MK, Tomarev SI. Expression of myocilin mutants sensitizes cells to oxidative stress-induced apoptosis: implication for glaucoma pathogenesis. Am J Pathol. 2010 Jun;176(6):2880–90. [PMID 20382707]

3. Chou TH, et al. Transgenic mice expressing mutated Tyr437His human myocilin develop progressive loss ofretinal ganglion cell electrical responsiveness and axonopathy with normal IOP. Invest Ophthalmol Vis Sci. 2014 Aug 14;55(9):5602–9. [PMID 25125600]

Intellectual Property: HHS Reference No. E–091–2015/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Tedd Fenn; 424–297–0336; *tedd.fenn@nih.gov.*

Dated: April 27, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–10275 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–095: Special Review.

Date: May 6, 2015.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10272 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: June 1–2, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section

Date: June 2–3, 2015.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: June 2, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street, Washington, DC 20001.

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pilot Clinical Studies in Nephrology and Urology.

Date: June 2–3, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Temporal dynamics of Neurophysiological Patterns as Potential Targets for Treating Cognitive Deficits in Brain Disorders.

Date: June 2, 2015

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10273 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Option License: The Development of a Single Domain Human Anti-Mesothelin Monoclonal Antibody as a Bispecific Antibody for the Treatment of Human Cancers.

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive start-up option license to practice the inventions embodied in U.S. Patent Application 61/706,396 entitled ''Mesothelin Antibodies And Methods For Eliciting Potent Antitumor Activity'' [HHS Ref. E–236–2012/0–US–01], PCT Application PCT/US2013/059883 entitled ''Mesothelin Antibodies And Methods For Eliciting Potent Antitumor Activity'' [HHS Ref. E–236–2012/0–PCT–02], and all related continuing and foreign patents/patent applications for the technology family, to Oncolinx Pharmaceuticals, LLC. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive start-up option licensed territory may be worldwide, and the field of use may be limited to:

The use of bispecific antibodies having:

(a) The complementary determining regions (CDRs) of the monoclonal antibody SD1; and

(b) the CDRs of an anti-CD3 antibody, for the treatment of mesothelin-expressing cancers. The Licensed Field of Use explicitly excludes the use of the CDR sequences of SD1 in a monospecific antibody, or in the form of an immunotoxin, antibody-drug conjugate, or chimeric antigen receptor.

Upon the expiration or termination of the exclusive start-up option license, Oncolinx Pharmaceuticals, LLC will have the exclusive right to execute an exclusive commercialization license which will supersede and replace the exclusive start-up option license with no greater field of use and territory than granted in the exclusive start-up option license.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 19, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; Email: *lambertsond@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns a monoclonal antibody and methods of using the antibody for the treatment of mesothelin-expressing cancers, including mesothelioma, lung cancer, ovarian cancer and pancreatic cancer.

The specific antibody covered by this technology is designated SD1, which is a single domain, fully human monoclonal antibody against mesothelin.

Mesothelin is a cell surface antigen that is preferentially expressed on certain types of cancer cells. The SD1 antibody can selectively bind to these cancer cells and induce cell death while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive start-up option license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive start-up option license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive start-up option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 27, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–10276 Filed 5–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0042]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council. The Navigation Safety Advisory Council provides advice and recommendations to the Secretary of Homeland Security, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Completed applications should reach the Coast Guard on or before June 30, 2015.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Navigation Safety Advisory Council that also indentifies which membership category the applicant is applying under, along with the resume detailing the applicant's experience via one of the following methods:

- *By mail:* Commandant (CG–NAV)/NAVSAC Attn: Mr. George Detweiler, Alternate Designated Federal Officer, Commandant (CG–NAV), U.S. Coast Guard 2703 Martin Luther King Avenue SE., STOP 7418, Washington, DC 20593–7418;
- By fax to 202–372–1991; or
- By email to *George.H.Detweiler@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer, telephone 202–372–1566, fax 202–372–1991, or email *George.H.Detweiler@uscg.mil;* or Mr. Burt Lahn, Navigation Safety Advisory Council coordinator, telephone 202–372–1526, or email *Burt.A.Lahn@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council is a federal advisory committee authorized by 33 U.S.C. 2073 and chartered under the *Federal Advisory Committee Act,* (5 U.S.C. Appendix). The Navigation Safety Advisory Council provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

The Navigation Safety Advisory Council is expected to meet at least twice each year, or more often with the approval of the Designated Federal Officer. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided for called meetings. The Navigation Safety Advisory Council is composed of not more than 21 members who all will have expertise in Inland and International vessel navigation Rules of the Road, aids to maritime navigation, maritime law, vessel safety, port safety, or commercial diving safety. Each member will be appointed to represent the viewpoints and interests of one of the following groups or organizations, and at least one member will be appointed to represent each membership category:

a. Commercial vessel owners or operators;

b. Professional mariners;

c. Recreational boaters;

d. The recreational boating industry;

e. State agencies responsible for vessel or port safety; and

f. The Maritime Law Association.

Members serve as representatives and are not Special Government Employees as defined in section 202(a) of Title 18, U.S.C.

The Coast Guard will consider applications for seven positions that expire or become vacant on November 4, 2015, in the following categories:

a. Professional mariners;

b. Recreational boaters;

c. Recreational Boating Industry; and

d. State agencies responsible for vessel or port safety;

To be eligible, you should have experience in one of the categories listed above. Members serve terms of office of up to three (3) years. Members may be reappointed to an additional term, serving not more than six consecutive years. In the event the Navigation Safety Advisory Council terminates, all appointments to the Council terminate.

The Department of Homeland Security does not discriminate in selection of Council members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Council, submit your cover letter and resume to Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer by email or mail according to instructions in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

All email submittals will receive email receipt confirmation.

To visit our online docket, go to *https://www.regulations.gov.* Enter the docket number for this notice (USCG–2015–0042) in the Search box, and click

''Search''. Please do not post your resume on this site.

G.C. Rasicot,

Director, Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2015–10329 Filed 5–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2015–0009]

Request for Applicants for Appointment to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Committee Management; Request for Applicants for Appointment to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee.

SUMMARY: U.S. Customs and Border Protection is requesting individuals who are interested in serving on the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee to apply for appointment. The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee is tasked with providing advice to the Secretary of the Department of Homeland Security through the Commissioner of U.S. Customs and Border Protection on matters related to the performance of airport and seaport inspections coinciding with the assessment of an agriculture, customs, or immigration user fee.

DATES: Applications for membership should reach U.S. Customs and Border Protection at the address below on or before June 3, 2015.

ADDRESSES: If you wish to apply for membership, your application should be submitted by one of the following means:

- *Email: Traderelations@dhs.gov.*
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Balanced Membership Plans: The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee may consist of up to 20 members. Members are appointed by and serve at the pleasure of the Secretary of the Department of Homeland Security. Members are selected to represent the point of view of the airline, cruise ship, transportation, and other industries that may be subject to agriculture, customs, or immigration user fees and are not Special Government Employees as defined in 18 U.S.C. 202(a). To achieve a fairly balanced membership, the composition of an advisory committee's membership will depend upon several factors, including the advisory committee's mission; the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; the types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; the need to obtain divergent points of view on the issues before the advisory committee; and the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. The Commissioner of U.S. Customs and Border Protection will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee. Members shall not be paid or reimbursed for any travel, lodging expenses, or related costs for their participation on this Committee.

Committee Meetings

The Committee is expected to meet at least once per year. Additional meetings may be held with the approval of the Designated Federal Officer. Committee meetings shall be open to the public unless a determination is made by the appropriate Department of Homeland Security official in accordance with Department of Homeland Security policy and directives that the meeting should be closed in accordance with 5 U.S.C. 552b(c).

Committee Membership

Membership on the Committee is personal to the appointee and a member may not send an alternate to represent him or her at a Committee meeting. Appointees will serve a two-year term of office to run concurrent with the duration of the charter.

No person who is required to register under the *Foreign Agents Registration Act* as an agent or representative of a foreign principal may serve on this advisory Committee.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter is required. Members will not be paid compensation by the Federal Government for their services with respect to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee must provide the following:

- Statement of interest and reasons for application;
- Complete professional resume;
- Home address and telephone number;
- Work address, telephone number, and email address; and
- Statement of the industry you represent.

The Department of Homeland Security does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Dated: April 28, 2015.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2015–10308 Filed 5–1–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2015–0014]

Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) Charter Renewal

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Charter Renewal

SUMMARY: The Secretary of the Department of Homeland Security (DHS) has determined that the renewal of the charter of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) is necessary and in the public interest in connection with the U.S. Customs and Border Protection's (CBP's) performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC).

ADDRESSES: If you desire to submit comments on this action, they must be submitted by July 6, 2015. Comments must be identified by (docket number) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* (*Tradeevents@dhs.gov*). Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.
- *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and USCBP–2015–0014, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and search for Docket Number USCBP–2015–0014. To submit a comment, see the link on the Regulations.gov Web site for ''How do I submit a comment?'' located on the right hand side of the main site page.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

Purpose and Objective: The charter of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) is being renewed for two years in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. Appendix. A copy of the charter can be found at *http://www.cbp.gov/sites/default/files/documents/COAC%20Charter%20Filed%203.23.15.pdf.* COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury. The COAC may consider issues such as: global supply chain security and facilitation, CBP modernization and automation, air cargo security, customs broker regulations, trade enforcement, exports, trusted trader, revenue modernization, One U.S. Government approach to trade and safety of imports, agricultural inspection, and protection of intellectual property rights.

Duration: The committee's charter is effective March 23, 2015, and expires March 23, 2017.

Responsible CBP Officials: Ms. Maria Luisa Boyce, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440.

Dated: April 29, 2015.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement/Executive Director, Office of Trade Relations.

[FR Doc. 2015–10371 Filed 5–1–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of the Strawn Group, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of The Strawn Group, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that The Strawn Group has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of October 31, 2014.

DATES: *Effective Dates:* The approval of The Strawn Group, as commercial gauger became effective on October 31, 2014. The next triennial inspection date will be scheduled for October 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that The Strawn Group, 3855 Villa Ridge Road, Houston, TX 77068, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. The Strawn Group is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
8.2	Standard practice for automatic sampling of liquid petroleum and petroleum products.
8.3	Standard practice for mixing and handling of liquid samples of petroleum and petroleum products.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*

Dated: April 23, 2015.

Ira S. Reese,

Executive Director,

Laboratories and Scientific Services Directorate.

[FR Doc. 2015–10152 Filed 5–1–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0122]

Agency Information Collection Activities: Screening Requirements for Carriers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Screening Requirements for Carriers. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Screening Requirements for Carriers.

OMB Number: 1651–0122.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e) the Act) authorizes the Department of Homeland Security to establish procedures which carriers must undertake for the proper screening of their alien passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for an automatic reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. To be eligible to obtain such an automatic reduction, refund, or waiver of a fine, the carrier must provide evidence to CBP that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3.

Some examples of the evidence the carrier may provide to CBP include: a description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 65.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 6,500.

Dated: April 22, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–10059 Filed 5–1–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0110]

Agency Information Collection Activities: Visa Waiver Program Carrier Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Visa Waiver Program Carrier Agreement (CBP Form I–775). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected on Form I–775. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Visa Waiver Program Carrier Agreement.

OMB Number: 1651–0110.

Form Number: CBP Form I–775.

Abstract: Section 223 of the Immigration and Nationality Act (INA) (8 U.S.C. 1223(a)) provides for the necessity of a transportation contract. The statute provides that the Attorney General may enter into contracts with transportation lines for the inspection and administration of aliens coming into the United States from a foreign territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered into any such contracts which may be required by the Attorney General. Pursuant to the Homeland Security Act of 2002, this authority was transferred to the Secretary of Homeland Security.

The Visa Waiver Program Carrier Agreement (CBP Form I–775) is used by carriers to request acceptance by CBP into the Visa Waiver Program (VWP). This form is an agreement whereby carriers agree to the terms of the VWP as delineated in section 217(e) of the INA (8 U.S.C. 1187(e)). Once participation is granted, CBP Form I–775 serves to hold carriers liable for the transportation costs, to ensure the completion of required forms, and to share passenger data. Regulations are promulgated at 8 CFR part 217.6, Carrier Agreements. A copy of CBP Form I–775 is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_I775.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to information collected or to CBP Form I–775.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 400.

Estimated Number of Total Annual Responses: 400.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 200.

Dated: April 29, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–10372 Filed 5–1–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2015–N053; FF09E15000–FXHC112509CBRA1–156]

John H. Chafee Coastal Barrier Resources System; Availability of Final Revised Maps for Maine, Maryland, New Jersey, New York, North Carolina, and Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Coastal Barrier Resources Act (CBRA) requires the Secretary of the Interior (Secretary) to review the maps of the John H. Chafee Coastal Barrier Resources System (CBRS) at least once every 5 years and make any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces. The U.S. Fish and Wildlife Service (Service) has conducted this review and has prepared final revised maps for all of the CBRS units in Maine, all units in Maryland, all units in New Jersey, all units in Virginia, 1 unit in New York, and 13 units in North Carolina. The maps were produced by the Service in partnership with the Federal Emergency Management Agency (FEMA) and in consultation with the appropriate Federal, State, and local officials. This notice announces the findings of the Service's review and the availability of final revised maps for 182 CBRS units. The final revised maps for these CBRS units, dated August 1, 2014, are the official controlling CBRS maps for these areas.

DATES: Changes to the CBRS depicted on the final revised maps, dated August 1, 2014, become effective on May 4, 2015.

ADDRESSES: For information about how to get copies of the maps or where to go to view them, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, Division of Budget and Technical Support, U.S. Fish and Wildlife Service Headquarters, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041; telephone (703) 358–2071; or electronic mail (email) *CBRA@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Background information on the CBRA (CBRA; 16 U.S.C. 3501 *et seq.*) and the CBRS, as well as information on the digital conversion effort and the methodology used to produce the revised maps, can be found in a notice the Service published in the **Federal Register** on August 29, 2013 (78 FR 53467).

For information on how to access the final revised maps, see the Availability of Final Maps and Related Information section below.

Announced Map Modifications

This notice announces modifications to the maps for all of the CBRS units in Maine, all units in Maryland, all units in New Jersey, all units in Virginia, 1 unit in New York, and 13 units in North Carolina. Most of the modifications were made to reflect changes to the CBRS units as a result of natural forces (*e.g.,* erosion and accretion). The CBRA requires the Secretary to review the CBRS maps at least once every 5 years and make, in consultation with the appropriate Federal, State, and local officials, any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces (16 U.S.C. 3503(c)).

The Service's review resulted in a set of 118 final revised maps, dated August 1, 2014, depicting a total of 182 CBRS units. The set of maps includes 19 maps for 34 CBRS units located in Maine; 23 maps for 49 CBRS units located in Maryland; 16 maps for 21 CBRS units located in New Jersey; 32 maps for 64 CBRS units located in Virginia; 2 maps for 1 CBRS unit located in New York; and 26 maps for 13 CBRS units located in North Carolina. Comprehensively revised maps for North Carolina Units L07, L08, and L09, were made effective on December 18, 2014, via Pub. L. 113–253; therefore, the revised maps prepared for these units through the digital conversion effort will not be adopted administratively by the Service and are not described in this notice. The Service found that a total of 138 of the

182 CBRS units reviewed had experienced changes in their size or location as a result of natural forces since they were last mapped. The Service's review of these areas also found three CBRS units that required modifications to correct administrative errors that were made in the past on maps for Washington County, Maine; Cumberland County, Maine; and Northampton County, Virginia. The revised maps were produced by the Service in partnership with FEMA.

The Service is specifically notifying the following stakeholders concerning the availability of the final revised maps: the Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the affected areas; the Governors of the affected areas; and other appropriate Federal, State, and local officials.

Consultation With Federal, State, and Local Officials

Consultation and Comment Period

The CBRA requires consultation with the appropriate Federal, State, and local officials (stakeholders) on the proposed CBRS boundary modifications to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces (16 U.S.C 3503(c)). The Service fulfilled this requirement by holding a 30-day comment period on the draft maps (dated September 30, 2013) for Federal, State, and local stakeholders, from June 10, 2014, through July 10, 2014. This comment period was announced in a notice published in the **Federal Register** (79 FR 33207) on June 10, 2014.

Formal notification of the comment period was provided via letters to approximately 295 stakeholders, including the Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the House of Representatives and Senate for the affected areas; the Governors of the affected areas; the local elected officials of the affected areas; and other appropriate Federal, State, and local officials.

Comments and Service Responses

The June 2014 notice specifically solicited comments from Federal, State, and local officials. Below is a summary of the written comments and/or acknowledgements received from stakeholders (Federal, State, and local officials) and the Service's response to those comments. Comments received from non-stakeholders were not considered as part of this process and are therefore not summarized or responded to below. Interested parties may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements to view copies of the comments received during the stakeholder review period.

Maryland

1. Calvert County Office of the County Administrator: The Calvert County Administrator indicated that the County's understanding is that the geomorphic modification that was proposed to Unit MD–37P, which expanded the unit to include the entire shoreline of Flag Ponds Nature Park, would not prohibit projects that are consistent with the purpose of the protected area. The County Administrator stated that if their understanding is correct, they have no objection to the proposed expansion of the unit.

Service Response to the Calvert County Office of the County Administrator: The only Federal spending prohibition within Otherwise Protected Areas (OPAs) of the CBRS (such as Unit MD–37P) is the prohibition on Federal flood insurance. Therefore, the expansion of Unit MD–37P will not affect federally funded projects. There is also an exception to the prohibition on Federal flood insurance for structures within OPAs that are used in a manner consistent with the purpose for which the area is protected (*e.g.,* park visitor center).

2. State of Maryland Department of Natural Resources: The State of Maryland Department of Natural Resources concurred with the proposed modifications to the CBRS maps in Maryland.

North Carolina

1. Carteret County Shore Protection Office: The Carteret County Shore Protection Office (CCSPO) requested that the eastern boundary of Unit NC–06P be made consistent with the federally maintained and marked/buoyed navigation channel that is within the larger water feature known as Bogue Inlet. Specifically, the CCSPO recommended that the eastern boundary of Unit NC–06P be repositioned to the west to follow the Huggins/Dudley Island shoreline and merge with the part of the channel on the Unit NC–06P map identified as ''Bogue Inlet.'' The CCSPO submitted bathymetry maps generated by the U.S. Army Corps of Engineers that identify the position of the deep water and navigational aids marking the main channel.

Service Response to the Carteret County Shore Protection Office: The Service found no indication that the eastern boundary of Unit NC–06P was intended to follow the deepest portion of the navigation channel; rather, it generally follows the boundary between Onslow and Carteret Counties on the original CBRS base map, which falls roughly within Bogue Inlet (between Bear Island and Emerald Isle). The Service believes that the original intent of the CBRS boundary was to include Bear Island and its associated aquatic habitat within Unit NC–06P. Therefore, it would not be appropriate to place the boundary in the deepest portion of the navigation channel, which would remove some of the associated aquatic habitat of Bear Island (located between Dudley Island and Emerald Isle) from the CBRS. The boundaries of Unit NC–06P on the final revised map dated August 1, 2014, remain the same as those shown on the draft map dated September 30, 2013.

2. Dare County Planning Department: The Dare County Planning Department (DCPD) requested that the Service review two previously issued CBRS determination letters to ensure that two specific structures adjacent to Unit L03 were not adversely affected (*i.e.,* made ineligible for Federal flood insurance) by the revised maps. The DCPD also asked that any properties currently not located in CBRA zones, which as a result of the new maps will be located in the CBRA zone, be identified and provided to the County. Additionally, the DCPD stated that portions of the boundary in Unit L03 as it applies to the Kinnakeet Shores subdivision should have been modified to follow a distinct demarcation of wetlands in a manner similar to modifications that were made to CBRS boundaries in other locations. The DCPD is pleased that the digital conversion of the maps will make them more user friendly and hopes that the revised FEMA Flood Insurance Rate Maps (FIRMs) to be released in 2015 will include the revised CBRS boundaries.

Service Response to the Dare County Planning Department: The Service reviewed the two CBRS property determination letters that were submitted by the DCPD. No modifications were made to Unit L03 and there is no change in the CBRS determinations for these two properties.

Additionally, the Service reviewed all of the modifications that were made in Dare County and can confirm that none

of them add additional structures or land to the CBRS (with the exception of some very minor additions of wetlands).

The Service is authorized to make minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces. Generally, the Service will only make such modifications to a boundary where the intent of the boundary segment was clearly to follow a geomorphic feature on the ground, and the feature had undergone natural change. The Service's review of Unit L03 found that the boundary segment that affects the Kinnakeet Shores subdivision was not originally intended to follow the edge of the wetlands, but rather a dirt road depicted on the underlying CBRS base map. Therefore, the Service did not modify the boundary to follow the wetlands as suggested by the DCPD. The boundary of Unit L03 affecting the Kinnakeet Shores Subdivision on the final revised map dated August 1, 2014, remains the same as the boundary depicted on the formerly controlling CBRS map of the area dated October 18, 1999.

The Service is working with FEMA to include the updated CBRS boundaries adopted through this notice on the FIRMs that FEMA is revising in 2015. The CBRS boundaries are shown on FEMA's FIRMs for informational purposes; the official CBRS maps maintained by the Service will remain the official source of boundary location information for the CBRS.

3. Town of North Topsail Beach: The Town of North Topsail Beach (TNTB) requested that the portions of the TNTB that had a full complement of infrastructure at the time Unit L06 was established be removed from the CBRS and that the associated aquatic habitat north of Topsail Island and around New River Inlet that is zoned as conservation area in local land use plans be reclassified from a System Unit to an OPA. The TNTB also requested that the Service make no modifications to the coincident boundary between Units L05 and L06 in New River Inlet, because the Town believes that it will make an existing navigation project even more complex and will significantly impact the disposal of material from the channel maintenance on North Topsail Beach's shoreline.

Service Response to the TNTB: Changes to the CBRS boundaries through the digital conversion effort are limited to the administrative modifications the Secretary is authorized to make under the CBRA (16 U.S.C. 3503(c)–(e)). Changes that are outside the scope of this authority must be made through the comprehensive map modernization process, which entails Congressional enactment of legislation to make the revised maps effective. Additional information about CBRS digital conversion and comprehensive map modernization can be found in the Digital Conversion of the CBRS Maps section of the notice published by the Service in the **Federal Register** on August 29, 2013 (78 FR 53467). Unit L06 has already undergone the comprehensive map modernization process and the Service has prepared final recommended maps for Congressional consideration dated November 20, 2013, which propose additions to and removals from the CBRS. The results of the Service's comprehensive review of Unit L06 (including an assessment of the level of infrastructure that was on the ground at the time of the Unit's designation in 1982) are contained in Service testimony presented before the House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs on April 8, 2014. The Service's review found that though there were some structures on the ground and a main trunk line of infrastructure that ran along the length of the unit in 1982, the area still met the CBRA's criteria for an undeveloped coastal barrier when it was designated within the CBRS in 1982. The Service does not consider areas such as the associated aquatic habitat north of Topsail Island and around New River Inlet that are identified as ''conserved'' solely through land use plans and/or zoning designations to qualify for OPA status. Therefore, the Service does not recommend reclassifying such areas from System Units to OPAs. Additionally, such a reclassification would be outside of the scope of the digital conversion effort.

Regarding the realignment of the coincident boundary between Units L05 and L06 to the current location of New River Inlet, this modification complies with the directive in the CBRA (16 U.S.C. 3503(c)) that the Service shall make such minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred as a result of natural forces. Additionally, whether the channel is within Unit L05 or Unit L06 will not have an effect on whether or not the project is allowable under an exception to the CBRA, as the units are adjacent and of the same CBRS unit type (System Unit). Therefore, the boundaries of Units L05 and L06 on the final revised maps dated August 1, 2014, remain the same as those shown on the draft maps dated September 30, 2013.

4. Town of Topsail Beach: The Service received comments from the Town of Topsail Beach regarding Unit L07. The Service did not consider these comments, because the revised map for Unit L07 that was prepared through the digital conversion effort was superseded by a comprehensively revised map that was made effective on December 18, 2014, via Pub. L. 113–253.

Virginia

1. Commonwealth of Virginia Department of Conservation and Recreation: The Commonwealth of Virginia Department of Conservation and Recreation supported the revision of the maps, as well as the Service's efforts to make them digitally accessible.

No Changes to Draft Maps

The Service made no changes to the CBRS boundaries depicted on the draft maps dated September 30, 2013, as a result of the summer 2014 comment period (June 10, 2014; 79 FR 33207). The CBRS boundaries depicted on the final revised maps, dated August 1, 2014, are identical to the CBRS boundaries depicted on the draft revised maps dated September 30, 2013.

Summary of Modifications to the CBRS Boundaries

Below is a summary of the changes depicted on the final revised maps dated August 1, 2014.

Maine

The Service's review found 22 of the 34 CBRS units in Maine to have changed due to natural forces. The final revised maps for Units A03C and A07 correct administrative errors that were made by the Service in 1990.

A01: LUBEC BARRIERS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline.

A03: JASPER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A03B: STARBOARD UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A03C: POPPLESTONE BEACH/ROQUE ISLAND UNIT. The landward boundary of the Popplestone Beach segment of the unit has been modified to correct an administrative error in the transcription of the boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990, for this

unit. The area in question was first added to the CBRS at the request of the State of Maine on April 18, 1983, through the minor and technical boundary modification process authorized by section 4(c) of the CBRA (Pub. L. 97–348). This same area, which had been in the CBRS since 1983, was misidentified as an ''addition'' to the CBRS in the Service's *1988 Report to Congress: Volume 2, Maine.* This correction is supported by an assessment of the historical maps and aerial imagery for this area, as well as by the legislative history of the Coastal Barrier Improvement Act (CBIA; Pub. L. 101–591). Additionally, the landward boundaries of the Great Bar, Popplestone Beach, and Rogue Island Harbor segments of the unit have been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A05B: HEAD BEACH UNIT. The southeastern boundary of the unit has been modified to include the entire frontal dune within the unit.

A06: CAPE ELIZABETH UNIT. The landward boundary of the eastern segment of the unit has been modified to account for natural change in the shoreline of the pond within the unit.

A07: SCARBOROUGH BEACH UNIT. The southern landward portion of the boundary has been modified to correct an administrative error in the transcription of the boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990, for this unit. This correction is supported by an assessment of the historical maps and aerial imagery for this area, as well as by the legislative history of the CBIA (Pub. L 101–591).

A08: CRESCENT SURF UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A09: SEAPOINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–04: SEAL COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline.

ME–07P: ROQUE BLUFFS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–09P: PETIT MANAN/BOIS BUBERT UNIT. The boundary has been modified in the northern segment of the unit to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–10P: OVER POINT UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–11: POND ISLAND UNIT. A segment of boundary has been added to the southeastern portion of the unit to clarify the extent of the unit, which includes portions of Pond Island but not Hog Island. As a result, a segment of boundary has been removed from the southwestern side of the unit to keep one side of the unit open to East Penobscot Bay.

ME–12: THRUMCAP UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–14: NASH POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–15P: LITTLE RIVER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–16: HUNNEWELL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–17: SMALL POINT BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has also been modified to account for natural changes in the location of the barrier in the area of Small Point Beach.

ME–18: STOVER POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–20P: OGUNQUIT BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–23: PHILLIPS COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

Maryland

The Service's review found 29 of the 49 CBRS units in Maryland to have changed due to natural forces.

MD–01P: ASSATEAGUE ISLAND UNIT. The landward boundary of the unit has been modified to account for the migration of sand outside of the unit in Sinepuxent Bay.

MD–03: SOUND SHORE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–06: JOES COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to account for channel migration along Joes Gut.

MD–09P: ST. PIERRE POINT UNIT. The landward boundary of the unit has been modified to account for the channel migration along an unnamed channel. The southern boundary of the unit has been modified to include the entire barrier feature, which has expanded to the south. The northern boundary of the unit has been modified to include the entire barrier feature, which has expanded to the east.

MD–12: DEAL ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–14: FRANKS ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Rock Creek.

MD–15: LONG POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to include the entirety of an accreting barrier spit located south of Long Point and its associated aquatic habitat within the unit.

MD–16: STUMP POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Stacey Gut.

MD–20: JENNY ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–18P: MARSH ISLAND UNIT. The northern landward boundary of the unit has been modified slightly to account for erosion and channel migration along Little Pungers Creek.

MD–37P: FLAG PONDS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to include the entirety of an accreting barrier spit and its associated aquatic habitat within the unit.

MD–38: COVE POINT MARSH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–24: COVEY CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The northern boundary has been moved further north to account for shoreline erosion within the unit.

MD–26: BOONE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and to account for shoreline erosion.

MD–27: BENONI POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and to account for shoreline erosion.

MD–30: KENT POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–32: STEVENSVILLE UNIT. The landward and northern boundaries of the unit have been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–33: WESLEY CHURCH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–35: WILSON POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–41: GREEN HOLLY POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–44: ST. CLARENCE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline erosion.

MD–45: DEEP POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has also been modified slightly to include the entirety of an accreting sand spit within the unit.

MD–46: POINT LOOK–IN UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–47: TANNER CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–48P: POINT LOOKOUT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–49: BISCO CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–53: BLAKE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–54: BELVEDERE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–56: ST. CATHERINE ISLAND UNIT. The boundary of the unit has been modified to include an accreting sand spit on the eastern side of St. Catherine Island.

New Jersey

The Service's review found 19 of the 21 CBRS units in New Jersey to have changed due to natural forces.

NJ–02: SEIDLER BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

NJ–03P: CLIFFWOD BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes in the wetland/fastland interface and along the banks of Whale Creek and Treasure Lake. The western boundary of the unit has been modified to account for the accretion of the sand spit at the western end of Cliffwood Beach.

NJ–04: CONASKONK POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes to the wetland/fastland interface and the southernmost edge of Chingarora Creek.

NJ–04A: NAVESINK/SHREWSBURY COMPLEX UNIT. The boundary of the northern segment of the unit has been modified to include more of the sand sharing system in the Navesink River to the north, northwest, and northeast of Barley Point. The boundary of the northern segment of the unit has been modified to the south and southeast of Barley Point to reflect the current location of the channels that the boundary follows. The eastern boundary of the southern segment of the unit has been modified slightly to fully include all of the islands behind the barrier within the unit.

NJ–04B: METEDECONK NECK UNIT. The boundary of the northern segment of the unit has been modified to reflect natural changes that have occurred along the shoreline of Herring Island and in the configuration of the wetland/fastland interface. The boundary of the southern segment of the unit has been modified to reflect natural changes in the shoreline along Metedeconk Neck and along minor channels.

NJ–04BP: METEDECONK NECK UNIT. The boundary of the northern segment of the unit has been modified to reflect natural changes that have occurred along the shoreline of Herring Island. The boundary of the southern segment of the unit has been modified to reflect natural changes along the shoreline along Metedeconk Neck.

NJ–05P: ISLAND BEACH UNIT. The boundary of the southern portion of the unit has been modified to include the entirety of an unnamed island in Barnegat Bay which is already partially within the unit.

NJ–06: CEDAR BONNET ISLAND UNIT. A portion of the northern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary coincident with a segment of Unit NJ–06P has been modified to reflect natural changes along the shoreline of an unnamed channel. The boundary has been modified to follow the center of an unnamed channel running between Units NJ–06 and NJ–06P.

NJ–06P: CEDAR BONNET ISLAND UNIT. The boundaries of three of the four discrete segments of the unit in Little Egg Harbor have been modified to reflect natural changes that occurred along the shorelines of the islands. The boundary coincident with a segment of Unit NJ–06 has been modified to reflect natural changes along the shoreline of an unnamed channel.

NJ–07P: BRIGANTINE UNIT. The boundary of the unit has been modified to account for channel migration and erosion along several channels. The boundary, primarily in the northern part of the unit, has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and the shoreline.

NJ–08P: CORSON INLET UNIT. The boundary of the unit has been modified to account for channel migration and erosion along a tributary to Corson Sound, Ben Hands Thorofare, Crook Horn Creek, and Weakfish Creek.

NJ–09: STONE HARBOR UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on the northwestern side of the unit and along Slab Creek and Nichols Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for channel migration along Gravelly Run, Great Flat Thorofare, Hammock Creek, and Jenkins Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for natural changes along the southeastern shoreline of Nummy Island.

NJ–09P: STONE HARBOR UNIT. The boundary of the unit has been modified to account for channel migration along Dung Thorofare. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for channel migration along Gravelly Run, Great Flat Thorofare, Hammock Creek, and Jenkins Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for natural changes along the southeastern shoreline of Nummy Island.

NJ–11P: HIGBEE BEACH UNIT. A portion of the southern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

NJ–12: DEL HAVEN UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units NJ–12 and NJ–12P has been modified to account for shoreline erosion along Delaware Bay.

NJ–12P: DEL HAVEN UNIT. The coincident boundary between Units NJ–12 and NJ–12P has been modified to account for shoreline erosion along Delaware Bay.

NJ–13: KIMBLES BEACH UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. A small portion of the boundary that follows the shoreline of Delaware Bay at Kimbles Beach has been modified to account for erosion.

NJ–14: MOORES BEACH UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units NJ–14 and NJ–14P has been modified to account for channel migration along East Creek, West Creek, and several unnamed channels.

NJ–14P: MOORES BEACH UNIT. The boundary of the unit has been modified to

reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has been modified to account for channel migration along Bidwell Creek, Dennis Creek, Riggins Ditch, Sluice Creek, and several unnamed channels. The coincident boundary between Units NJ–14 and NJ–14P has been modified to account for channel migration along East Creek, West Creek, and several unnamed channels.

New York

The Service's review found that Unit NY–60P (the only CBRS unit in New York that was part of this review) had changed due to natural forces. The other CBRS units in New York were not assessed as part of this review.

NY–60P: JAMAICA BAY. The boundary of the unit has been modified to reflect changes in the configuration of the wetland/fastland interface and the shoreline in Jamaica Bay.

North Carolina

The Service's review found 12 of the CBRS units in North Carolina to have changed due to natural forces. This review did not include the North Carolina portion of Unit M01 in Brunswick County, because that unit crosses the State boundary into South Carolina and was included in its entirety with the draft maps for all CBRS units in South Carolina that were remapped and referenced in a notice the Service published in the **Federal Register** on August 29, 2013 (78 FR 53467). Additionally, this review originally included North Carolina Units L07, L08, and L09; however, comprehensively revised maps for those three units were made effective on December 18, 2014, via Pub. L. 113–253; therefore, the draft maps for those units prepared through the digital conversion effort have been superseded and are not included in this notice. The comprehensively revised maps, dated December 18, 2014, make modifications to the CBRS to remove areas that were inappropriately included within the CBRS in the past; add undeveloped areas that qualify for inclusion; and also address the natural changes that were proposed in the notice published in the **Federal Register** (79 FR 33207) on June 10, 2014.

L01: CURRITUCK BANKS UNIT. The landward boundary of the unit on Knotts Island Bay has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and the shoreline. The coincident boundary with the northern segment of Unit L01P has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on Currituck Sound, and modified to follow the center of the channel in Old Currituck Inlet.

L01P: CURRITUCK BANKS UNIT. The landward boundary of the northern segment of L01P has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on Currituck Sound, and modified to follow the center of the channel in Old Currituck Inlet.

NC–01: PINE ISLAND BAY UNIT. The landward boundary of the unit along the shoreline of the excluded area has been modified slightly to better follow the shoreline as depicted on the new CBRS base map.

NC–02: NAGS HEAD WOODS UNIT. The landward boundary along the portion of the northern segment of the unit that follows the edge of the marsh has been modified to better follow the edge of the marsh as depicted on the new CBRS base map.

NC–03P: CAPE HATTERAS UNIT. Portions of the landward boundary of the unit have been modified to account for shoreline erosion. The boundary of the unit has been modified to account for accretion at the southern end of Ocracoke Island. The western boundary of the unit, where it is coincident with Unit L03AP, has intentionally not been modified. This area continues to change, and there are CBRS units on both sides of the boundary, so a modification in this area would have no effect.

L03AP: SHACKLEFORD BANKS UNIT. The western boundary of the unit along Beaufort Inlet has been expanded westward into the inlet. The original boundary of the unit has been generally located along the shoreline of Shackleford Banks within the inlet, but the island and the inlet continue to change. The boundary has been modified and generalized to account for existing conditions and the potential for future change. The eastern boundary of the unit, which is coincident with Unit NC–03P, has intentionally not been modified. This area continues to change, and there are OPAs on both sides of the boundary, so a modification in this area would have no effect.

NC–04P: FORT MACON UNIT. The northern boundary of the excluded area of the unit surrounding United States Coast Guard Station Fort Macon has been modified to account for erosion along the shoreline.

NC–05P: ROOSEVELT NATURAL AREA UNIT. The northern boundary of the unit along Bogue Sound has been modified to account for erosion.

NC–06P: HAMMOCKS BEACH UNIT. The northern boundary of the unit has been modified to reflect natural changes that have occurred to Bear Island and Bogue Inlet. A portion of the southern boundary of the unit has been modified to reflect the current location of Sanders Creek. The location of the shoals in Bear Inlet has been dynamic, and so has the location of the Bear Inlet channel. Additionally, the southern boundary of the unit is coincident with Unit L05. The boundary in this area has been simply generalized, and the current geomorphic features of the inlet were not used to determine the placement of the boundary.

L05: ONSLOW BEACH COMPLEX UNIT. The southern boundary of the southern segment of the unit has been modified to follow what is now the center of New River Inlet up the New River channel. The boundary of the unit has also been modified due to channel migration along Wards Channel through to its junction with New River. In the northern segment of the unit, the northern boundary has been modified to follow the center of Shacklefoot Channel and Sanders Creek through to its junction with Bear Inlet. The location of the shoals in Bear Inlet has been dynamic, and so has the location of the Bear Inlet channel. Additionally, the northern boundary of the unit is coincident with Unit NC–06P. The boundary in this area has been simply generalized, and the current geomorphic features of the inlet were not used to determine the placement of the boundary.

L06: TOPSAIL UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and the location of New River Inlet. Due to the dynamic nature of the New River Inlet and the adjacent barrier island to the northeast of the unit, the boundary through the inlet has been modified and generalized to account for existing conditions and the potential for future change.

NC–07P: CAPE FEAR UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and the shoreline along Bald Head Creek, Cape Creek, and the Cape Fear River and its associated aquatic habitat.

Virginia

The Service's review found 55 of the 64 CBRS units in Virginia to have changed due to natural forces. The final revised map for Unit VA–09 corrects an administrative error that was made by the Service in 1997.

VA–01P: ASSATEAGUE ISLAND UNIT. The southern boundary of the unit has been modified to account for accretion at the southern end of Assateague Island.

VA–02P: ASSAWOMAN ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary on the southern side of the unit has been modified to reflect natural changes along Shipping Creek and Wire Passage. The northern boundary of the unit has been modified to account for natural changes along Assawoman Creek. The northern boundary formerly ran through Assawoman Inlet, which has since closed, and now runs from Assawoman Creek across Assawoman Island to the Atlantic Ocean.

VA–03P: METOMPKIN ISLAND UNIT. The northern boundary of the unit has been modified to account for channel migration along Wire Passage. The landward boundary of the unit has been modified to reflect the westward migration of Metompkin Island. The coincident boundary between Units VA–03P and K03 has been modified to follow the current location of Metompkin Inlet and to account for accretion at the northern end of Cedar Island. The name of this unit has been

changed from ''Metomkin Island'' to ''Metompkin Island'' to correctly identify the underlying barrier feature.

K03: CEDAR ISLAND UNIT. The coincident boundary between Units VA–03P and K03 has been modified to follow the current location of Metompkin Inlet and to account for accretion at the northern end of Cedar Island. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units K03 and VA–04P has been modified to follow the current location of Wachapreague Inlet and to account for accretion at the southern end of Cedar Island.

VA–04P: PARRAMORE/HOG/COBB ISLANDS UNIT. The coincident boundary between Units VA–04P and K04 has been modified to reflect the migration of Long Channel, Little Cobb Island, and the southern end of Cobb Island.

K04: LITTLE COBB ISLAND UNIT. The coincident boundary between Units VA–04P and K04 has been modified to reflect the migration of Long Channel, Little Cobb Island, and the southern end of Cobb Island. The coincident boundary between Units K04 and VA–05P has been moved southward to reflect natural changes in Sand Shoal Inlet and the barrier islands to the north and south of the inlet.

VA–05P: WRECK ISLAND UNIT. The coincident boundary between Units K04 and VA–05P has been moved southward to reflect natural changes in Sand Shoal Inlet and the barrier islands to the north and south of the inlet. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units VA–05P and VA–06P has been modified to reflect channel migration along Main Ship Shoal Channel.

VA–06P: SMITH ISLAND UNIT. The coincident boundary between Units VA–05P and VA–06P has been modified to reflect channel migration along Main Ship Shoal Channel.

K05, K05P: FISHERMAN'S ISLAND UNIT. The coincident boundary between Units K05 and K05P has been modified to reflect channel migration along two minor unnamed channels and to account for natural changes in the wetland/fastland interface.

VA–09: ELLIOTS CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. Additionally, the southern boundary of the unit has been modified to correct an administrative error that was made by the Service in 1997 when this unit was last modified to account for natural changes under 16 U.S.C. 3503(c). In 1996, Northampton County, Virginia, submitted a letter to the Service that objected to the Service's proposed addition of part of a subdivision known as Sugar Hill, located near Elliott's Creek. The County's letter indicated that the subdivision was already being developed and did not qualify for addition to the CBRS under 16 U.S.C. 3503(c), as there had been no natural changes that warranted the proposed addition. The Service's background records indicate that the Service re-examined the area in 1996 and agreed that the area in question should not be included within the CBRS. However, when the Service adopted the final set of revised maps via a notice in the **Federal Register** on February 24, 1997 (62 FR 8258), the map that proposed to add the area in question to the CBRS was adopted in error. This correction is supported by an assessment of the historical maps and aerial imagery for this area and the Service's background records for Unit VA–09.

VA–10: OLD PLANTATION CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–11: WESTCOAT POINT UNIT. The boundary of the unit in Cherrystone Inlet has been modified to account for the migration of sand outside the unit at Westcoat Point.

VA–12: GREAT NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–13: WESTERHOUSE CREEK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–14: SHOOTING POINT UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–16: SCARBOROUGH NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–17: CRADDOCK NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–18: HACKS NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–21: BEACH ISLAND UNIT. The northeastern boundary of the unit has been modified to reflect the eastward migration of Beach Island.

VA–23: SIMPSON BEND UNIT. The boundary of the unit has been modified to reflect channel migration along Cedar Cove Gut.

VA–24: DRUM BAY UNIT. The boundary of the unit has been modified to reflect channel migration along Starling Creek and Fishing Creek.

VA–26: CHEESEMAN ISLAND UNIT. The boundary of the unit has been modified to reflect the eastward migration of Cheeseman Island and to include wetlands and aquatic habitat that are now associated with the barrier. The southern boundary of the unit has been modified to account for the migration of sand both eastward and southward.

VA–28: TANGIER ISLAND UNIT. The northwestern boundary of the unit has been modified to reflect channel migration along an unnamed channel and to account for the northwesterly expansion of the barrier feature at the southern end of Tangier Island.

VA–29: ELBOW POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–30: WHITE POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–31: CABIN POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The southern end of the unit has been modified to account for the southeasterly expansion of the barrier feature.

VA–32: GLEBE POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–33: SANDY POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–34: JUDITH SOUND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–35: COD CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–36: PRESLEY CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–37: CORDREYS BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The western boundary of the unit has been modified to account for the westward expansion of the barrier feature.

VA–38: MARSHALLS BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–39P: GINNY BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–40: GASKIN POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–41: OWENS POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–42: CHESAPEAKE BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have

occurred in the configuration of the wetland/fastland interface.

VA–43: FLEET POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–44: BUSSEL POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–45: HARVEYS CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–46: INGRAM COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–47: BLUFF POINT NECK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The southern boundary of the unit has been modified to account for erosion of the barrier feature.

VA–48: BARNES CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–49: NORTH POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–50: WINDMILL POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–51: DEEP HOLE POINT UNIT. The landward boundary of the unit has been modified to reflect shoreline erosion. The eastern boundary of the unit has been modified to account for the migration of sand outside the unit in Windmill Point Creek. The western boundary of the unit has been modified to reflect the westward migration of the barrier at Deep Hole Point and include wetlands and aquatic habitat that are now associated with the barrier.

VA–52: STURGEON CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–53: JACKSON CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–55: RIGBY ISLAND/BETHEL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The name of this unit has been changed from ''Rigby Island/Bethal Beach'' to ''Rigby Island/Bethel Beach'' to correctly identify the underlying barrier feature.

VA–56: NEW POINT COMFORT UNIT. The northern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The western boundary of the unit has been modified to account for migrating sand.

VA–57: WARE NECK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–58: SEVERN RIVER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–59P: PLUM TREE ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–60P: LONG CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has been modified to reflect channel migration along Grunland Creek.

Availability of Final Maps and Related Information

The final revised maps dated August 1, 2014, and digital boundary data can be accessed and downloaded from the Service's Web site, at *http://www.fws.gov/CBRA.* The digital boundary data are available for reference purposes only. The digital boundaries are best viewed using the base imagery to which the boundaries were drawn; this information is printed in the title block of the maps. The Service is not responsible for any misuse or misinterpretation of the digital boundary data.

Interested parties may also contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice to make arrangements to view the final maps at the Service's Headquarters office. Interested parties who are unable to access the maps via the Service's Web site or at the Service's Headquarters office may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section, and reasonable accommodations will be made to ensure the individual's ability to view the maps.

Dated: April 20, 2015.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2015–10279 Filed 5–1–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15ED00CPN]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Department of the Interior.

ACTION: Notice of an information collection, Earth Explorer User Registration Service.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before July 6, 2015.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–NEW, Earth Explorer User Registration Service' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ryan Longhenry, Long Term Archive Project Manager, at (605) 695–1611 or *rlonghenry@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS proposes to collect general demographic information about public users that download products from the USGS using Earth Explorer (EE) application to help address Congress, OMB and DOI management's questions as to who uses Landsat and other remote sensing data and what are the most common uses of these data which they have found to be valuable for justifying and maintaining the free distribution of the USGS land remote sensing data. EE also stores information about users that download source code products (GloVis for example). The information collected in the database includes the names, affiliations, addresses, email address and telephone numbers of individuals. The information is gathered to facilitate the reporting of demographic data for use of the EE Application. Demographic

data is also used to make decisions on future functional requirements within the system.

Earth Explorer is a Web application that enables users to find, preview, and download or order digital data published by the U.S. Geological Survey. There are more than 300 USGS Datasets available from the site. To download or order products from EE, users must register with the EE system.

The information is stored on an internal encrypted database. The data is provided by the customer and utilized to contact the customer to notify customer of data ready for download. If downloads are unsuccessful, the customer is contacted to provide updated information. In addition, EE requires certain fields to be completed such as name, address, city and zip code before an account can be established and an order can be submitted. Email is sent to new registered users to validate user email information.

EE does not derive new data and does not create new data through aggregation.

Personal information is not used as search criteria. Access to the information uses the least privileged access methodology. Authorized individuals with specifically granted access to the Privacy Act data can retrieve only by account number or order number Personal data is encrypted while stored in the Database. Contact ID is generated when account is created.

II. Data

OMB Control Number: 1028–NEW.

Title: Earth Explorer User Registration Service.

Type of Request: Existing information collection without prior approval.

Affected Public: Federal Agencies, state, tribal, and non-government individuals who have requested USGS products from USGS/Earth Explorer application are covered in this system. The system has only one category for individuals.

Respondent's Obligation: Participant data is furnished by the individual and is required for order fulfillment.

Frequency of Collection: The information is collected at the time of registration and is only updated by the individual. Updates to the information are accomplished by the individual when they feel the need to update. Occasions' that user might want to update would be if something has changed in their demographic (email address as an example).

Estimated Annual Number of Respondents: 84,000.

Estimated Total Number of Annual Responses: Approximately 84,000 new users are added on an annual basis.

Estimated Time per Response: 2 min.

Estimated Annual Burden Hours: 2,800.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Francis P. Kelly,

Director, EROS Center.

[FR Doc. 2015–10317 Filed 5–1–15; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[GX15AE3800C2000]

National Environmental Policy Act: Implementing Procedures; Revision to Categorical Exclusions for U.S. Geological Survey (516 DM 9)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Final National Environmental Policy Act implementing procedures.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality regulations implementing NEPA, the U.S. Geological Survey (USGS) in the Department of the Interior (the Department) is revising two existing categorical exclusions included in the Department of the Interior's Departmental Manual 516 DM 9. The revisions to the categorical exclusions pertain to two types of activities conducted by the USGS: The excavation of trenches across potentially active faults to assess the history of earthquakes along those faults; and the removal of hydrologic and water-quality monitoring structures and equipment and restoration of the sites. USGS experience with these activities indicates that they do not normally have the potential for significant environmental impacts in the absence of extraordinary circumstances. The intent of the revisions is to improve the efficiency of the environmental review process.

DATES: *Effective Date:* The categorical exclusions are effective immediately.

ADDRESSES: To obtain a copy of the revised categorical exclusions contact Esther Eng, Chief, Environmental Management Branch—USGS, 12201 Sunrise Valley Drive, Reston, VA 20192, email: *eeng@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Esther Eng, Chief, Environmental Management Branch—USGS, (703) 648–7550.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental consequences of their decisions before deciding whether and how to proceed. The Council on Environmental Quality encourages Federal agencies to use categorical exclusions to protect the environment more efficiently by (a) reducing the resources spent analyzing proposals that normally do not have the potential to significantly impact the environment and, (b) focusing resources on proposals that may have significant environmental impacts. The appropriate use of categorical exclusions allows the NEPA review to conclude without preparing either an environmental assessment (EA) or an environmental impact statement (EIS) (40 CFR 1500.4(p) and 40 CFR 1508.4) in the absence of extraordinary circumstances. The Department's list of extraordinary circumstances under which a normally excluded action would require further analysis and documentation in an EA or EIS is found at 43 CFR 46.215.

Categorical Exclusion Revision for Trenching

The USGS excavates trenches across potentially active faults to assess the history of earthquakes along those faults. The study of ancient earthquakes and their rates of occurrence is known as paleoseismology. Paleoseismic data obtained from trenching studies is a fundamental input for USGS National Seismic Hazard Maps. The USGS National Seismic Hazard Maps are used to inform emergency response and to guide building codes. The revision of this categorical exclusion will allow for a more efficient NEPA review.

Public comments were solicited through a notice placed in the **Federal Register** on August 22, 2014 (*79 FR 49799*). The proposed language for the categorical exclusion in the notice was as follows: ''Digging and subsequent site restoration of exploratory trenches not to exceed one acre of surface disturbance.''

Categorical Exclusion for Water Monitoring Equipment

One of the seven science mission areas of the USGS, the Water Mission Area, is tasked with collecting and disseminating reliable, impartial, and timely information that is needed to understand the Nation's water resources. The Water Mission Area actively promotes the use of this information by decision makers to: (1) Minimize loss of life and property as a result of water-related natural hazards, such as floods, droughts, and land movement; (2) effectively manage groundwater and surface-water resources for domestic, agricultural, commercial, industrial, recreational, and ecological uses; (3) protect and enhance water resources for human health, aquatic health, and environmental quality; and (4) contribute to the wise physical and economic development of the Nation's resources for the benefit of present and future generations. To achieve this science mission, the USGS constructs and operates a variety of hydrologic and water-quality monitoring structures and equipment at streams, rivers, springs, wellheads, and other sites across the Nation. After these structures are no longer needed for scientific data collection, they are removed and the site is restored. The revision of this categorical exclusion will allow for a more efficient NEPA review.

Public comments were solicited through the same notice placed in the **Federal Register** on August 22, 2014 (*79 FR 49799*). The proposed language for the categorical exclusion as set out in the notice was as follows: ''Operation, construction, installation, and removal—including restoration of sites to the pre-structure condition or equivalent of the surrounding environment—of hydrologic and water-quality monitoring structures and equipment including but not limited to weirs, cableways, streamgaging stations, groundwater wells, and meteorologic structures.''

Public Comments

No public comments were received.

Categorical Exclusion

The Department of the Interior will add the following categorical exclusions to the Departmental Manual at 516 DM 9, section 9.5 Categorical Exclusions:

E. Operation, construction, installation, and removal—including restoration of sites to the pre-structure condition or equivalent of the surrounding environment—of hydrologic and water-quality monitoring structures and equipment including but not limited to weirs, cableways, streamgaging stations, groundwater wells, and meteorologic structures; and

I. Digging and subsequent site restoration of exploratory trenches not to exceed one acre of surface disturbance.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2015–10242 Filed 5–1–15; 8:45 am]

BILLING CODE 4310–AM–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–015]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 7, 2015 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–1013 (Second Review)(Saccharin from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on May 20, 2015.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: April 28, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–10385 Filed 4–30–15; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection; Rap Back Services Form (1–796)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** (80 FR 9753), on February 24, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 3, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Rap Back Services Form.

(3) *Agency form number:* 1–796.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by authorized agencies to enroll individuals in the Rap Back Service to ensure the submitting agency is notified when individuals in positions of trust engage in criminal conduct or individuals under the supervision of a criminal justice agency commit subsequent criminal acts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 120,000 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: April 28, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

BILLING CODE 4410–02

[FR Doc. 2015–10301 Filed 5–1–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of an existing collection in use without an OMB control number; FBI Expungement Form (FD–1114)

AGENCY: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 80, Number 39, pages 10714–10715, on February 27, 20–15, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 3, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Approval of a collection in use without an OMB control number.

(2) *Title of the Form/Collection:* FBI Expungement Form.

(3) *Agency form number:* FD–1114.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by criminal justice and affiliated judicial agencies to request appropriate removal of criminal history information from an individual's record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 152,430 respondents are authorized to complete the form which would require approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 89,521 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC, 20530.

Dated: April 28, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–10302 Filed 5–1–15; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Americans With Disabilities Act Discrimination Complaint Form

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Disability Rights Section, has submitted the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** (80 FR 10513) February 26, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 3, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebecca Bond, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 or (800) 514–0383 (TTY) (the Division's Information Line), or write her at the Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue NW., Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Americans with Disabilities Act Discrimination Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504 of the Rehabilitation Act. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 of the Rehabilitation Act and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 9,100 respondents per year at 0.50 hours per complaint form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 4,550 hours. It is estimated that respondents will take 0.50 hour to complete the questionnaire. The burden hours for collecting respondent data sum to 4,550 hours (9,100 respondents × 0.50 hours = 4,550 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: April 28, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–10303 Filed 5–1–15; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Public Disclosure Room; Notice of Temporary Relocation

Renovation of the Employee Benefits Security Administration's Public Disclosure Room (PDR) will necessitate a temporary relocation and suspension of operations for a total of up to six (6) business days. The renovation will begin on or after May 11 and is expected to last four to six weeks. The PDR will be closed up to three (3) business days prior to moving to the temporary location and up to three (3) business days after the renovation. You can check for updates on the schedule on the EBSA Web site, at *http://www.dol.gov/ebsa/.* The temporary address for the PDR will be N1519, 200 Constitution Avenue NW., Washington, DC 20210. While the PDR is at this temporary location, the telephone number will remain (202) 693–8673, and the hours of operation will temporarily change to 8:00 am–4:00 pm Monday through Friday. Following the renovation, the PDR will re-open in Suite N–1515 at 200 Constitution Avenue NW., Washington, DC 20210. The telephone number will remain (202) 693–8673 and the hours of operation will return to 8:15 am to 4:45 pm.

Signed at Washington, DC this 28th day of April, 2015.

Judy Mares,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2015–10395 Filed 5–1–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration Program Year (PY) 2015 Workforce Innovation and Opportunity Act (WIOA) Allotments; PY 2015 Wagner-Peyser Act Final Allotments and PY 2015 Workforce Information Grants.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces allotments for PY 2015 for WIOA Title

I Youth, Adults and Dislocated Worker Activities programs; final allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2015 and Workforce Information Grants allotments for PY 2015.

WIOA allotments for States and the State final allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. WIOA requires allotments for the outlying areas to be competitively based rather than based on a formula determined by the Secretary of Labor (Secretary) as occurred under the Workforce Investment Act (WIA). For PY 2015, the Secretary is using the transitional authority provided by WIOA in Section 503(b) to use the discretionary formula rationale and methodology for allocating PY 2015 funds for the outlying areas (American Samoa, Guam, Northern Marianas, Palau, and the Virgin Islands) that was published in the **Federal Register** at 65 FR 8236 (Feb. 17, 2000). The formula that the Department of Labor (Department) used for PY 2015 is the same formula used in PY 2014 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas. The Department will implement a competitive grant process for funding the outlying areas in PY 2016.

DATES: Comments on the formula used to allot funds to the outlying areas must be received by June 3, 2015.

ADDRESSES: Submit written comments to the Employment and Training Administration (ETA), Office of Financial Administration, 200 Constitution Avenue NW., Room N–4702, Washington, DC 20210, Attention: Ms. Anita Harvey, email: *harvey.anita@dol.gov*

Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed.

Comments: The Department will retain all comments on this notice and will release them upon request via email to any member of the public. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print, Braille and electronic file. The Department also will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the notice in an alternative format, contact Ms. Harvey using the information provided above. The Department will retain all comments received without making any changes to the comments, including any personal information provided. The Department therefore cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments; this information would be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information.

FOR FURTHER INFORMATION CONTACT: WIOA Youth Activities allotments—Evan Rosenberg at (202) 693–3593 or LaSharn Youngblood at (202) 693–3606; WIOA Adult and Dislocated Worker Activities and ES final allotments—Robert Kight at (202) 693–3937; Workforce Information Grant allotments—Kim Vitelli at (202) 693–3639. Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department is announcing WIOA allotments for PY 2015 for Youth Activities, Adults and Dislocated Worker Activities, Wagner-Peyser Act PY 2015 final allotments, and PY 2015 Workforce Information Grant allotments. This notice provides information on the amount of funds available during PY 2015 to States with an approved WIA Title I and Wagner-Peyser Act Strategic Plan for PY 2015, and information regarding allotments to the outlying areas.

On December 16, 2014, the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 was signed into law (''the Act''). The Act, Division G, Title I, Section 107 of the Act allows the Secretary of Labor (Secretary) to set aside up to 0.5 percent of most operating funds. The evaluation provision is consistent with the Federal government's priority on evidence-based policy and programming and provides important opportunities to expand evaluations and demonstrations in the Department to build solid evidence about what works best. In the past, funds for ETA evaluations and demonstrations were separately appropriated and managed by ETA. This year, that separate authority has been replaced by the set aside provision. Funds are transferred to the Department's Chief Evaluation Office to implement formal evaluations and demonstrations in collaboration with ETA. For 2015, the Secretary set aside .25 percent of the TES and SUIESO appropriations. ETA spread the amount to be set aside for each appropriation among the programs funded by that appropriation with more than $100 million in funding. This includes WIOA Adult, Youth and Dislocated Worker and Wagner-Peyser Employment Service program budgets.

We also have attached tables listing the PY 2015 allotments for programs under WIOA Title I Youth Activities (Table A), Adult and Dislocated Workers Employment and Training Activities (Tables B and C, respectively), and the PY 2015 Wagner-Peyser Act final allotments (Table D). We also have attached the PY 2015 Workforce Information Grant table (Table E).

Youth Activities Allotments. The appropriated level for PY 2015 for WIOA Youth Activities totals $831,842,000. After reducing the appropriation by $2,295,000 for evaluations, $829,547,000 is available for Youth Activities. Table A includes a breakdown of the Youth Activities program allotments for PY 2015 and provides a comparison of these allotments to PY 2014 Youth Activities allotments for all States, and outlying areas. For the Native American Youth program, the total amount available is 1.5 percent of the total amount for Youth Activities (after the evaluations set aside), in accordance with WIOA section 127. The total funding available for the outlying areas was reserved at 0.25 percent of the amount appropriated for Youth Activities (after the evaluations set aside) minus the amount reserved for Native American Youth (in accordance with WIOA section 127(b)(1)(B)(i)). On December 17, 2003, Public Law 108–188, the *Compact of Free Association Amendments Act of 2003 (''the Compact''),* was signed into law. The Compact provided for consolidation of WIA Title I funding, for the Marshall Islands and Micronesia into supplemental grants provided from the Department of Education's appropriation. See 48 U.S.C. 1921 d (f)(1)(B)(iii). The Compact also specified

that the Republic of Palau remained eligible for WIA Title I funding. See 48 U.S.C. 1921d(f)(1)(B)(ix). WIOA section 512(g)(1) updated the Compact to refer to WIOA funding. The Consolidated and Further Continuing Appropriations Act, 2015 (Division F, Title III, Section 306 of Pub. L. 113–235) authorized WIOA Title I funding to Palau through FY 2015.

Under WIA, the Secretary had discretion for determining the methodology for distributing funds to all outlying areas. Under WIOA the Secretary must disseminate the funds through a competitive process. Using the transition authority provided in WIOA Section 503(b), ETA will delay implementation of a competitive grant process for outlying areas until PY 2016. For PY 2015, the Department used the same methodology used since PY 2000 (*i.e.,* we distribute funds among the outlying areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain for the state for the previous year). For the relative share calculation in PY 2015, the Department continued to use the data obtained from the 2010 Census for American Samoa, Guam, Commonwealth of Northern Marianas Islands, and Virgin Islands. For Palau, the Department continued to use data from Palau's 2005 Census.

After the Department calculated the amount for the outlying areas and Native Americans, we determined that the amount available for PY 2015 allotments to the States is $815,061,036. This total amount was below the required $1 billion threshold specified in WIOA section 127(b)(1)(C)(iv)(IV); therefore, the Department did not apply the WIOA additional minimum provisions. Instead, as required by WIOA, the Department used the Job Training Partnership Act (JTPA) (Pub. L. 97–300), section 262(a)(3) (as amended by section 207 of the Job Training Reform Amendments of 1992, Pub. L. 102–367) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor. WIOA also provides that no state may receive an allotment that is more than 130 percent of the allotment percentage for the State for the previous year. The three data factors required by WIOA for the PY 2015 Youth Activities State formula allotments are:

(1) The average number of unemployed individuals for Areas of Substantial Unemployment (ASUs) for the 12-month period, July 2013–June 2014;

(2) Number of excess unemployed individuals or the ASU excess (depending on which is higher) averages for the same 12-month period used for ASU unemployed data; and

(3) Number of economically disadvantaged Youth (age 16 to 21, excluding college students in the workforce and military) from special tabulations of data from the American Community Survey (ACS), which the Department obtained from the Bureau in 2012. The Bureau collected the data used in the special tabulations for economically disadvantaged Youth between January 1, 2006–December 31, 2010.

For purposes of identifying ASUs for the within-State Youth Activities allocation formula, States should continue to use the data made available by BLS (as described in LAUS Technical Memorandum No. S–14–22). For purposes of determining the number of economically disadvantaged Youth for the statutory within-state allocation formula, States should continue to use the special tabulations of ACS data made available to them in 2013 and available at *http://www.doleta.gov/budget/disadvantagedYouthAdults.cfm* See TEGL No. 21–12 for further information.

Adult Employment and Training Activities Allotments. The total appropriated funds for Adult Activities in PY 2015 is $776,736,000. After reducing the appropriated amount by $2,143,000 for evaluations, $774,593,000 remains for Adult Activities, of which $772,656,517 is for States and $1,936,483 is for outlying areas. Table B shows the PY 2015 Adult Employment and Training Activities allotments and a State by State comparison of the PY 2015 allotments to PY 2014 allotments.

In accordance with WIOA, the Department reserved the total available for the outlying areas at 0.25 percent of the full amount appropriated for Adult Activities (after the evaluations set aside). As discussed in the Youth Activities section above, in PY 2015 the Department will distribute the Adult Activities funding for the outlying areas, using the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the Department used the statutory formula to distribute the remaining amount available for allotments to the States. The Department did not apply the WIOA minimum provisions for the PY 2015 allotments because the total amount available for the States was below the $960 million threshold required for Adult Activities in WIOA section 132(b)(1)(B)(iv)(IV). Instead, as required by WIOA, the Department calculated minimum allotments using the JTPA section 202(b)(2) (as amended by section 202 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent State minimum floor. WIOA also provides that no State may receive an allotment that is more than 130 percent of the allotment percentage for the State for the previous year. The three formula data factors for the Adult Activities program are the same as those used for the Youth Activities formula, except the Department used data for the number of economically disadvantaged Adults (age 18 to 72, excluding college students in the workforce and military).

As noted above, updated data for within-state ASU calculations is available from BLS, and States should continue to use the economically disadvantaged Adults data made available to States by the Department in 2013.

Dislocated Worker Employment and Training Activities Allotments. The amount appropriated for Dislocated Worker activities in PY 2015 totals $1,236,389,000. The total appropriation includes formula funds for the States, while the National Reserve is used for National Dislocated Worker Grants, technical assistance and training, demonstration projects, and the outlying areas' Dislocated Worker allotments. After reducing the appropriated amount by $3,411,000 for evaluations, a total of $1,232,978,000 remains available for Dislocated Worker activities. The amount available for outlying areas is $3,082,445, leaving $217,167,555 for the National Reserve and a total of $1,012,728,000 available for States. Like the Adult program, Table C shows the PY 2015 Dislocated Worker activities allotments and a by State comparison of the PY 2015 allotments to PY 2014 allotments.

Like the Adult Activities program, the Department reserved the total available for the outlying areas at 0.25 percent of the full amount appropriated for Dislocated Worker Activities (after the evaluations set aside). As with the Youth and Adult funds, the Department will not distribute the Dislocated Worker Activities funds for grants to the outlying areas by competitive grant until PY 2016. In PY 2015 the Department will use the same *pro rata* share as the areas received for the PY 2015 WIOA Adult Activities program, the same methodology used in PY 2014.

The three data factors required in WIOA for the PY 2015 Dislocated Worker State formula allotments are:

(1) Number of unemployed, averages for the 12-month period, October 2013—September 2014;

(2) Number of excess unemployed, averages for the 12-month period, October 2013—September 2014; and

(3) Number of long-term unemployed, averages for the 12-month period, October 2013—September 2014.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions until PY 2016, funding changes for States directly reflect the impact of changes in unemployment related data listed above.

Wagner-Peyser Act ES Final Allotments. The appropriated level for PY 2015 for ES grants totals $664,184,000. After reducing the appropriated amount by $1,784,000 for evaluations, a total of $662,400,000 remains available for ES programs. After determining the funding for outlying areas, the Department calculated allotments to States using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). The Department based PY 2015 formula allotments on each State's share of calendar year 2014 monthly averages of the civilian labor force (CLF) and unemployment. Section 6(b)(4) of the Wagner-Peyser Act requires the Secretary to set aside up to three percent of the total funds available for ES to ensure that each State will have sufficient resources to maintain statewide ES activities. In accordance with this provision, the Department included the three percent set-aside funds in this total allotment. The Department distributed the set-aside funds in two steps to States that have experienced a reduction in their relative share of the total resources available this year from their relative share of the total resources available the previous year. In Step 1, States that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. ETA calculated the median CLF density based on CLF data provided by BLS for calendar year 2014. All remaining set-aside funds were distributed on a *pro-rata* basis in Step 2 to all other States experiencing reductions in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of ES funds (Table D) includes $660,785,299 for States, as well as $1,614,701 for outlying areas.

Under section 7 of the Wagner-Peyser Act, ten percent of the total sums allotted to each State must be reserved for use by the Governor to provide performance incentives for ES offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

Workforce Information Grants Allotments. Total PY 2015 funding for Workforce Information Grants allotments to States is $32,000,000. The allotment figures for each State are listed in Table E. Funds are distributed by administrative formula, with a reserve of $176,800 for Guam and the Virgin Islands. Guam and the Virgin Islands allotment amounts are partially based on CLF data. The Department distributes the remaining funds to the States with 40 percent distributed equally to all States and 60 percent distributed based on each State's share of CLF for the 12 months ending September 2014.

TABLE A—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA YOUTH ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 VS PY 2014

State	PY 2014	PY 2015	Difference	% Difference
Total with Evaluations	$820,430,000	$831,842,000	$11,412,000	1.39
Total (WIOA Youth Activities)	$818,169,000	$829,547,000	$11,378,000	1.39
Alabama	10,363,134	10,973,635	610,501	5.89
Alaska	2,009,628	2,037,653	28,025	1.39
Arizona	16,873,353	18,380,399	1,507,046	8.93
Arkansas	6,814,031	7,694,400	880,369	12.92
California	119,122,833	120,707,084	1,584,251	1.33
Colorado	12,414,406	11,835,030	(579,376)	−4.67
Connecticut	9,398,657	9,634,681	236,024	2.51
Delaware	2,009,628	2,037,653	28,025	1.39
District of Columbia	2,216,117	2,329,955	113,838	5.14
Florida	45,067,004	42,774,978	(2,292,026)	−5.09
Georgia	27,467,948	27,630,735	162,787	0.59
Hawaii	2,049,527	2,037,653	(11,874)	−0.58
Idaho	3,414,748	3,116,131	(298,617)	−8.74
Illinois	38,093,547	42,336,174	4,242,627	11.14
Indiana	17,756,443	16,203,657	(1,552,786)	-8.74
Iowa	4,739,579	4,781,261	41,682	0.88
Kansas	5,398,508	5,370,179	(28,329)	−0.52
Kentucky	12,118,913	13,717,594	1,598,681	13.19
Louisiana	9,327,194	9,194,017	(133,177)	−1.43
Maine	3,244,888	3,214,985	(29,903)	−0.92
Maryland	11,989,592	12,364,002	374,410	3.12
Massachusetts	14,507,221	16,504,685	1,997,464	13.77
Michigan	30,072,831	31,250,104	1,177,273	3.91
Minnesota	9,947,978	9,078,036	(869,942)	−8.74
Mississippi	9,200,818	9,151,084	(49,734)	−0.54
Missouri	12,877,148	14,228,439	1,351,291	10.49
Montana	2,152,132	2,152,782	650	0.03
Nebraska	2,394,620	2,425,096	30,476	1.27
Nevada	8,865,521	9,034,617	169,096	1.91
New Hampshire	2,200,035	2,037,653	(162,382)	−7.38
New Jersey	25,513,414	23,282,287	(2,231,127)	−8.74
New Mexico	4,625,925	5,249,778	623,853	13.49
New York	52,011,703	52,128,262	116,559	0.22
North Carolina	28,871,997	26,347,165	(2,524,832)	−8.74
North Dakota	2,009,628	2,037,653	28,025	1.39

TABLE A—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA YOUTH ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 VS PY 2014—Continued

State	PY 2014	PY 2015	Difference	% Difference
Ohio	26,270,342	28,593,170	2,322,828	8.84
Oklahoma	6,258,954	6,941,080	682,126	10.90
Oregon	10,543,691	10,431,168	(112,523)	−1.07
Pennsylvania	33,509,103	30,984,178	(2,524,925)	−7.54
Puerto Rico	17,265,863	19,489,676	2,223,813	12.88
Rhode Island	3,743,023	4,106,989	363,966	9.72
South Carolina	12,574,365	11,474,747	(1,099,618)	−8.74
South Dakota	2,009,628	2,037,653	28,025	1.39
Tennessee	16,496,140	17,503,627	1,007,487	6.11
Texas	52,492,802	54,914,867	2,422,065	4.61
Utah	4,304,671	3,928,231	(376,440)	−8.74
Vermont	2,009,628	2,037,653	28,025	1.39
Virginia	13,392,465	13,325,559	(66,906)	−0.50
Washington	16,309,501	15,945,865	(363,636)	−2.23
West Virginia	3,957,765	3,987,564	29,799	0.75
Wisconsin	13,562,824	14,041,859	479,035	3.53
Wyoming	2,009,628	2,037,653	28,025	1.39
State Total	803,851,042	815,061,036	11,209,994	1.39
American Samoa	196,434	217,678	21,244	10.81
Guam	766,348	738,863	(27,485)	−3.59
Northern Marianas	402,258	403,686	1,428	0.35
Palau	75,000	75,000	0	0.00
Virgin Islands	605,383	607,532	2,149	0.35
Outlying Areas Total	2,045,423	2,042,759	(2,664)	−0.13
Native Americans	12,272,535	12,443,205	170,670	1.39
Evaluations set aside	2,261,000	2,295,000	34,000	1.50

TABLE B—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA ADULT ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 ALLOTMENTS VS PY 2014 ALLOTMENTS

State	PY 2014	PY 2015	Difference	% Difference
Total with Evaluations	$766,080,000	$776,736,000	$10,656,000	1.39
Total (WIOA Adult Activities)	$763,969,000	$774,593,000	$10,624,000	1.39
Alabama	10,127,957	10,701,084	573,127	5.66
Alaska	1,905,148	1,931,641	26,493	1.39
Arizona	15,910,029	17,323,692	1,413,663	8.89
Arkansas	6,508,494	7,337,318	828,824	12.73
California	114,152,207	115,578,226	1,426,019	1.25
Colorado	11,534,090	10,974,957	(559,133)	−4.85
Connecticut	8,642,428	8,856,853	214,425	2.48
Delaware	1,905,148	1,931,641	26,493	1.39
District of Columbia	2,014,101	2,119,523	105,422	5.23
Florida	44,979,171	42,797,775	(2,181,396)	−4.85
Georgia	26,369,329	26,506,892	137,563	0.52
Hawaii	2,137,808	1,951,282	(186,526)	−8.73
Idaho	3,171,735	2,894,258	(277,477)	−8.75
Illinois	35,721,028	39,706,093	3,985,065	11.16
Indiana	16,187,078	14,770,963	(1,416,115)	−8.75
Iowa	3,371,916	3,398,273	26,357	0.78
Kansas	4,537,758	4,502,095	(35,663)	−0.79
Kentucky	12,441,851	13,954,626	1,512,775	12.16
Louisiana	8,947,905	8,816,204	(131,701)	−1.47
Maine	2,958,900	2,927,292	(31,608)	−1.07
Maryland	11,120,651	11,464,414	343,763	3.09
Massachusetts	12,850,371	14,722,745	1,872,374	14.57
Michigan	28,122,010	28,780,666	658,656	2.34
Minnesota	8,509,251	7,764,825	(744,426)	−8.75
Mississippi	8,783,758	8,730,734	(53,024)	−0.60
Missouri	11,979,012	13,246,842	1,267,830	10.58
Montana	2,047,975	2,047,140	(835)	−0.04
Nebraska	1,905,148	1,931,641	26,493	1.39
Nevada	8,620,844	8,809,234	188,390	2.19
New Hampshire	1,905,148	1,931,641	26,493	1.39
New Jersey	24,644,654	22,488,633	(2,156,021)	−8.75
New Mexico	4,457,154	5,044,948	587,794	13.19
New York	50,339,040	50,421,651	82,611	0.16
North Carolina	27,573,758	25,161,487	(2,412,271)	−8.75
North Dakota	1,905,148	1,931,641	26,493	1.39
Ohio	24,343,116	26,518,096	2,174,980	8.93

TABLE B—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA ADULT ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 ALLOTMENTS VS PY 2014 ALLOTMENTS—Continued

State	PY 2014	PY 2015	Difference	% Difference
Oklahoma	6,047,269	6,689,426	642,157	10.62
Oregon	10,108,074	9,995,124	(112,950)	−1.12
Pennsylvania	30,619,150	28,195,888	(2,423,262)	−7.91
Puerto Rico	18,344,208	21,215,910	2,871,702	15.65
Rhode Island	3,230,712	3,569,777	339,065	10.50
South Carolina	12,134,396	11,072,827	(1,061,569)	−8.75
South Dakota	1,905,148	1,931,641	26,493	1.39
Tennessee	16,085,971	17,031,743	945,772	5.88
Texas	50,065,195	52,323,110	2,257,915	4.51
Utah	3,614,740	3,298,507	(316,233)	−8.75
Vermont	1,905,148	1,931,641	26,493	1.39
Virginia	12,445,438	12,370,494	(74,944)	−0.60
Washington	15,226,047	14,868,344	(357,703)	−2.35
West Virginia	4,028,840	4,056,659	27,819	0.69
Wisconsin	11,762,474	12,196,759	434,285	3.69
Wyoming	1,905,148	1,931,641	26,493	1.39
State Total	762,059,077	772,656,517	10,597,440	1.39
American Samoa	182,941	205,921	22,980	12.56
Guam	713,704	698,958	(14,746)	−2.07
Northern Marianas	374,568	381,883	7,315	1.95
Palau	75,000	75,000	0	0.00
Virgin Islands	563,710	574,721	11,011	1.95
Outlying Areas Total	1,909,923	1,936,483	26,560	1.39
Evaluations set aside	2,111,000	2,143,000	32,000	1.52

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 ALLOTMENTS VS PY 2014 ALLOTMENTS

State	PY 2014	PY 2015	Difference	% Difference
Total with Evaluations	$1,222,457,000	$1,236,389,000	$13,932,000	1.14
Total (WIOA Dislocated Worker Activities)	$1,219,087,000	$1,232,978,000	$13,891,000	1.14
Alabama	11,599,476	15,012,219	3,412,743	29.42
Alaska	1,633,027	2,184,119	551,092	33.75
Arizona	20,193,454	22,511,715	2,318,261	11.48
Arkansas	7,814,651	8,052,059	237,408	3.04
California	157,376,202	164,063,131	6,686,929	4.25
Colorado	15,822,647	13,622,336	(2,200,311)	−13.91
Connecticut	13,243,210	13,612,474	369,264	2.79
Delaware	2,613,882	2,596,904	(16,978)	−0.65
District of Columbia	2,998,287	3,443,627	445,340	14.85
Florida	60,315,153	61,786,732	1,471,579	2.44
Georgia	36,939,150	39,981,701	3,042,551	8.24
Hawaii	1,852,830	1,931,277	78,447	4.23
Idaho	3,461,421	2,636,879	(824,542)	−23.82
Illinois	54,907,799	58,325,151	3,417,352	6.22
Indiana	22,303,621	17,611,408	(4,692,213)	−21.04
Iowa	4,164,521	4,426,239	261,718	6.28
Kansas	5,471,022	4,682,959	(788,063)	−14.40
Kentucky	14,256,130	16,220,379	1,964,249	13.78
Louisiana	10,286,901	9,215,660	(1,071,241)	−10.41
Maine	3,807,546	3,592,396	(215,150)	−5.65
Maryland	16,637,979	17,549,612	911,633	5.48
Massachusetts	18,899,549	21,265,196	2,365,647	12.52
Michigan	36,932,673	40,080,962	3,148,289	8.52
Minnesota	9,452,346	8,332,420	(1,119,926)	−11.85
Mississippi	10,617,327	11,047,184	429,857	4.05
Missouri	16,292,492	18,476,297	2,183,805	13.40
Montana	1,659,822	1,699,458	39,636	2.39
Nebraska	2,044,195	2,016,308	(27,887)	−1.36
Nevada	12,539,486	13,272,377	732,891	5.84
New Hampshire	2,525,768	2,355,019	(170,749)	−6.76
New Jersey	38,580,867	33,968,534	(4,612,333)	−11.95
New Mexico	5,180,570	6,691,816	1,511,246	29.17
New York	67,330,827	69,009,253	1,678,426	2.49
North Carolina	38,671,061	31,698,026	(6,973,035)	−18.03
North Dakota	549,747	566,170	16,423	2.99
Ohio	32,568,365	33,758,857	1,190,492	3.66
Oklahoma	5,417,077	5,943,501	526,424	9.72
Oregon	13,140,217	13,672,401	532,184	4.05

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS, COMPARISON OF PY 2015 ALLOTMENTS VS PY 2014 ALLOTMENTS—Continued

State	PY 2014	PY 2015	Difference	% Difference
Pennsylvania	43,100,393	37,184,902	(5,915,491)	−13.72
Puerto Rico	14,743,999	20,357,210	5,613,211	38.07
Rhode Island	4,852,880	5,533,256	680,376	14.02
South Carolina	15,546,400	12,481,973	(3,064,427)	−19.71
South Dakota	800,633	856,158	55,525	6.94
Tennessee	20,840,426	21,507,643	667,217	3.20
Texas	57,992,167	55,598,809	(2,393,358)	−4.13
Utah	3,786,657	2,963,244	(823,413)	−21.75
Vermont	779,524	806,732	27,208	3.49
Virginia	15,956,793	17,685,631	1,728,838	10.83
Washington	19,149,875	19,533,856	383,981	2.01
West Virginia	4,272,884	4,814,588	541,704	12.68
Wisconsin	16,187,134	15,763,228	(423,906)	−2.62
Wyoming	726,937	728,014	1,077	0.15
State Total	998,838,000	1,012,728,000	13,890,000	1.39
American Samoa	291,924	327,780	35,856	12.28
Guam	1,138,877	1,112,584	(26,293)	−2.31
Northern Marianas	597,709	607,872	10,163	1.70
Palau	119,680	119,383	(297)	−0.25
Virgin Islands	899,528	914,826	15,298	1.70
Outlying Areas Total	3,047,718	3,082,445	34,727	1.14
National Reserve	217,201,282	217,167,555	(33,727)	−0.02
Evaluations set aside	3,370,000	3,411,000	41,000	1.22

TABLE D—U. S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, EMPLOYMENT SERVICE (WAGNER-PEYSER), PY 2015 VS PY 2014 FINAL ALLOTMENTS

State	Final PY 2014	Final PY 2015	Difference	% Difference
Total with Evaluation	$664,184,000	$664,184,000	$0	0.00
Total (ES Activities)	$664,184,000	$662,400,000	($1,784,000)	−0.27
Alabama	8,502,449	8,491,183	(11,266)	0.13
Alaska	7,219,997	7,200,604	(19,393)	0.27
Arizona	12,467,698	12,473,460	5,762	0.05
Arkansas	5,307,726	5,283,573	(24,153)	0.46
California	79,586,271	79,283,096	(303,175)	0.38
Colorado	10,685,065	10,626,917	(58,148)	0.54
Connecticut	7,561,842	7,565,360	3,518	0.05
Delaware	1,855,182	1,850,199	(4,983)	0.27
District of Columbia	2,123,634	2,088,474	(35,160)	1.66
Florida	38,551,390	38,350,606	(200,784)	0.52
Georgia	19,608,469	19,841,888	233,419	1.19
Hawaii	2,327,227	2,339,563	12,336	0.53
Idaho	6,015,543	5,999,385	(16,158)	0.27
Illinois	27,868,035	27,708,235	(159,800)	0.57
Indiana	12,821,228	12,751,284	(69,944)	0.55
Iowa	5,964,574	6,028,720	64,146	1.08
Kansas	5,526,029	5,498,111	(27,918)	0.51
Kentucky	8,506,643	8,465,309	(41,334)	0.49
Louisiana	8,094,739	8,076,868	(17,871)	0.22
Maine	3,577,386	3,567,777	(9,609)	0.27
Maryland	11,906,489	11,934,682	28,193	0.24
Massachusetts	13,409,175	13,585,040	175,865	1.31
Michigan	21,291,774	21,056,725	(235,049)	1.10
Minnesota	10,993,540	10,920,175	(73,365)	0.67
Mississippi	5,674,402	5,621,814	(52,588)	0.93
Missouri	11,888,860	11,967,561	78,701	0.66
Montana	4,915,931	4,902,727	(13,204)	0.27
Nebraska	5,605,477	5,512,267	(93,210)	1.66
Nevada	6,117,652	6,068,982	(48,670)	0.80
New Hampshire	2,650,012	2,641,511	(8,501)	0.32
New Jersey	19,124,756	18,973,701	(151,055)	0.79
New Mexico	5,516,541	5,501,724	(14,817)	0.27
New York	38,504,428	38,363,357	(141,071)	0.37
North Carolina	19,555,320	19,378,713	(176,607)	0.90
North Dakota	5,005,890	4,992,444	(13,446)	0.27
Ohio	23,710,251	23,445,526	(264,725)	1.12
Oklahoma	6,461,834	6,464,603	2,769	0.04
Oregon	8,138,876	8,093,834	(45,042)	0.55
Pennsylvania	25,781,009	25,557,772	(223,237)	0.87

TABLE D—U. S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, EMPLOYMENT SERVICE (WAGNER-PEYSER), PY 2015 VS PY 2014 FINAL ALLOTMENTS—Continued

State	Final PY 2014	Final PY 2015	Difference	% Difference
Puerto Rico	6,911,482	6,836,910	(74,572)	1.08
Rhode Island	2,453,424	2,437,864	(15,560)	0.63
South Carolina	9,079,879	8,992,138	(87,741)	0.97
South Dakota	4,626,593	4,614,166	(12,427)	0.27
Tennessee	12,636,661	12,567,163	(69,498)	0.55
Texas	47,954,459	48,160,966	206,507	0.43
Utah	6,395,863	6,289,510	(106,353)	1.66
Vermont	2,167,359	2,161,537	(5,822)	0.27
Virginia	15,390,720	15,846,585	455,865	2.96
Washington	13,819,721	13,756,839	(62,882)	0.46
West Virginia	5,295,592	5,281,368	(14,224)	0.27
Wisconsin	11,820,318	11,786,589	(33,729)	0.29
Wyoming	3,589,535	3,579,894	(9,641)	0.27
State Total	662,564,950	660,785,299	(1,779,651)	0.27
Guam	310,787	309,952	(835)	0.27
Virgin Islands	1,308,263	1,304,749	(3,514)	0.27
Outlying Areas Total	1,619,050	1,614,701	(4,349)	0.27
Evaluations set aside	0	1,784,000	1,784,000	N/A

TABLE E—U. S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WORKFORCE INFORMATION GRANTS TO STATES, PY 2015 VS PY 2014 ALLOTMENTS

State	PY 2014	PY 2015	Difference	% Difference
Total	$32,000,000	$32,000,000	$0	0.00
Alabama	507,835	504,328	(3,507)	0.69
Alaska	289,243	289,343	100	0.03
Arizona	612,836	613,057	221	0.04
Arkansas	407,384	405,110	(2,274)	0.56
California	2,512,037	2,512,646	609	0.02
Colorado	581,206	583,979	2,773	0.48
Connecticut	471,257	472,001	744	0.16
Delaware	298,885	299,203	318	0.11
District of Columbia	289,809	289,948	139	0.05
Florida	1,391,578	1,408,710	17,132	1.23
Georgia	831,404	824,471	(6,933)	0.83
Hawaii	323,731	325,099	1,368	0.42
Idaho	339,000	339,420	420	0.12
Illinois	1,046,809	1,041,040	(5,769)	0.55
Indiana	629,369	635,932	6,563	1.04
Iowa	445,306	450,811	5,505	1.24
Kansas	426,480	426,274	(206)	0.05
Kentucky	498,878	493,479	(5,399)	1.08
Louisiana	499,691	501,858	2,167	0.43
Maine	331,051	331,102	51	0.02
Maryland	626,679	623,467	(3,212)	0.51
Massachusetts	669,155	671,558	2,403	0.36
Michigan	815,743	820,078	4,335	0.53
Minnesota	607,750	608,644	894	0.15
Mississippi	405,143	398,706	(6,437)	1.59
Missouri	610,737	614,280	3,543	0.58
Montana	306,821	307,848	1,027	0.33
Nebraska	370,589	369,401	(1,188)	0.32
Nevada	411,954	411,778	(176)	0.04
New Hampshire	335,427	335,286	(141)	0.04
New Jersey	807,150	791,996	(15,154)	1.88
New Mexico	358,969	357,691	(1,278)	0.36
New York	1,414,730	1,413,628	(1,102)	0.08
North Carolina	820,492	813,419	(7,073)	0.86
North Dakota	293,355	294,439	1,084	0.37
Ohio	944,285	944,193	(92)	0.01
Oklahoma	465,806	464,819	(987)	0.21
Oregon	480,795	480,082	(713)	0.15
Pennsylvania	1,039,220	1,025,094	(14,126)	1.36
Puerto Rico	389,936	386,665	(3,271)	0.84
Rhode Island	312,805	312,352	(453)	0.14
South Carolina	509,004	509,225	221	0.04
South Dakota	299,407	299,746	339	0.11
Tennessee	624,985	614,134	(10,851)	1.74
Texas	1,796,213	1,821,458	25,245	1.41

TABLE E—U. S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, WORKFORCE INFORMATION GRANTS TO STATES, PY 2015 VS PY 2014 ALLOTMENTS—Continued

State	PY 2014	PY 2015	Difference	% Difference
Utah	413,138	420,602	7,464	1.81
Vermont	287,830	287,500	(330)	0.11
Virginia	759,585	765,965	6,380	0.84
Washington	668,760	666,958	(1,802)	0.27
West Virginia	342,636	341,935	(701)	0.20
Wisconsin	618,083	619,893	1,810	0.29
Wyoming	282,229	282,549	320	0.11
State Total	31,823,200	31,823,200	0	0.00
Guam	93,090	93,090	0	0.00
Virgin Islands	83,710	83,710	0	0.00
Outlying Areas Total	176,800	176,800	0	0.00

Portia Wu,

Assistant Secretary for Employment and Training.

[FR Doc. 2015–10328 Filed 5–1–15; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2015–02]

Scope of the Copyright Royalty Judges' Continuing Jurisdiction

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final order.

SUMMARY: The Copyright Royalty Judges (''CRJs''), acting pursuant to statute, referred novel material questions of substantive law to the Register of Copyrights for resolution. Those questions concerned the scope of the CRJs' authority, under the statutory grant of continuing jurisdiction over ratemaking determinations, to issue a clarifying interpretation of regulations adopted pursuant to such a determination. The Register resolved those questions in a written decision that was transmitted to the CRJs. That decision is reproduced below.

DATES: Effective Date: April 8, 2015.

FOR FURTHER INFORMATION CONTACT: Stephen Ruwe, Assistant General Counsel, U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8350.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Judges are tasked with determining and adjusting terms and rates of royalty payments of statutory licenses under the Copyright Act. *See* 17 U.S.C. 801. If, in the course of proceedings before the CRJs, novel material questions of substantive law concerning the interpretation of provisions of title 17 arise, the CRJs are required by statute to refer those questions to the Register of Copyrights for resolution. 17 U.S.C. 802(f)(1)(B).

On March 9, 2015, the CRJs, acting pursuant to 17 U.S.C. 802(f)(1)(B), referred novel material questions of substantive law to the Register, concerning the CRJs' authority to issue a clarifying interpretation of regulations adopted in a prior ratesetting determination. On April 8, 2015, the Register resolved those questions in a Memorandum Opinion that she transmitted to the CRJs. To provide the public with notice of the decision rendered by the Register, the Memorandum Opinion is reproduced in its entirety below.

Dated: April 28, 2015.

Maria A. Pallante,

Register of Copyrights and Director of the U.S. Copyright Office.

Before the U.S. Copyright Office Library of Congress Washington, DC 20559

In the Matter of Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services

Docket No. 2006–1 CRB DSTRA (SDARS I)

MEMORANDUM OPINION ON A NOVEL QUESTION OF LAW

In relation to the above-captioned proceeding before the Copyright Royalty Judges (''CRJs'' or ''Judges''), questions have arisen about the proper interpretation of 17 U.S.C. 803(c)(4), which provides the CRJs with ''continuing jurisdiction'' in certain circumstances to amend a written determination after it has issued. The CRJs determined that these were novel material questions of substantive law and, as required by section 802(f)(1)(B), referred them to the Register of Copyrights for resolution. The Register hereby resolves those referred questions.

I. Procedural Background

On January 24, 2008, the CRJs published final royalty rates and terms under the section 112(e) and 114 statutory licenses for the period 2007 through 2012 for preexisting satellite digital audio radio services (''SDARS I''). 73 FR 4080 (Jan. 24, 2008).[1] In that proceeding, the CRJs set a royalty rate as a percentage of the ''Gross Revenues'' of the satellite services. 73 FR at 4084. The definition of ''Gross Revenues'' adopted by the CRJs excluded several categories of revenues received by satellite services, such as revenues from channels and programming that are ''exempt from any license requirement or [are] separately licensed,'' and revenues attributable to channels and programming that are ''offered for a separate charge'' and ''use only incidental performances of sound recordings.'' 73 FR at 4102; 37 CFR 382.11 (2008) (paragraph (3)(vi)(B) & (D) of Gross Revenues definition).

On April 17, 2013, the CRJs adjusted the royalty rates and terms for satellite radio for the period 2013 through 2017 (''SDARS II''). 78 FR 23054 (Apr. 17, 2013) *as modified,* 78 FR 31842 (May, 28, 2013). In the course of that proceeding, SoundExchange criticized the manner in which Sirius XM had been excluding revenues in reliance on the SDARS I regulations, including its practice of excluding revenues attributable to sound recordings made before February 15, 1972, which are generally not subject to federal copyright protection, and thus do not fall within the section 112(e) and 114

[1] The CRJs' determination in SDARS I was appealed to the U.S. Court of Appeals for the District of Columbia Circuit. The court affirmed the determination in all but one respect, remanding to the CRJs the single matter of specifying a royalty for the use of the section 112 statutory license. *SoundExchange, Inc.* v. *Librarian of Congress,* 571 F.3d 1220 (D.C. Cir. 2009). That last issue was resolved by the CRJs in further proceedings. 75 FR 5513 (Feb. 3, 2010).

statutory licenses.[2] 78 FR at 23071. In SDARS II, the CRJs maintained the exclusions from gross revenues it had adopted in SDARS I, but added a new provision specifically addressing the proper treatment of pre-1972 sound recordings. 78 FR at 23079–81.

After the CRJs' determination in SDARS II, SoundExchange brought suit against Sirius XM on August 25, 2013 in the U.S. District Court for the District of Columbia, alleging that for the time period covered by SDARS I (2007 through 2012), Sirius XM had underpaid royalties by improperly excluding certain revenues from its gross revenue calculations, including revenues attributable to pre-1972 sound recordings. *SoundExchange, Inc.* v. *Sirius XM Radio, Inc.,*—F. Supp. 3d —, 2014 WL 4219591, *3-*5 (D.D.C. Aug. 26, 2014).

Rather than seeking to have the district court to resolve the dispute itself, Sirius XM asked the court to refer the issues to the CRJs under the administrative law doctrine of ''primary jurisdiction'' because they ''involve interpreting and applying the [CRJs'] regulations on gross revenues.'' *Id.* at *3. As explained by the DC Circuit, under that doctrine, when a court is ''adjudicating a claim [that] would 'require[] the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body,''' the court can ''suspend the judicial process 'pending referral of such issues to the administrative body for its view.'''' *United States* v. *Philip Morris USA Inc.,* 686 F.3d 832, 837 (D.C. Cir. 2012) (quoting *United States* v. *W. Pac. R.R. Co.,* 352 U.S. 59, 64 (1956)). SoundExchange disagreed that the doctrine applied, responding that the relevant regulatory definitions were unambiguous, and that the district court should therefore decide the case. *SoundExchange,* 2014 WL 4219591 at *4.

The district court agreed with Sirius XM, concluding that ''the gross revenue exclusions are ambiguous and do not, on their face, make clear whether Sirius XM's approaches were permissible under the regulations,'' and that referral to the CRJs under the primary jurisdiction doctrine was therefore appropriate. *Id.* In response to SoundExchange's related concern that the CRJs lacked authority to resolve the issues, the district court pointed to 17 U.S.C. 803(c)(4). *Id.* at *5. Section 803(c)(4) provides as follows:

> Continuing jurisdiction.— The Copyright Royalty Judges may issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the **Federal Register**.

17 U.S.C. 803(c)(4). The district court concluded that ''[n]either party is asking for a change to rates; only a clarification of the terms,'' and that such a clarification ''is within the [CRJs'] continuing jurisdiction.'' *SoundExchange,* 2014 WL 4219591 at *5. Accordingly, the court stayed its proceedings pending a decision by the CRJs clarifying the meaning of the regulations defining Gross Revenues.

On November 24, 2014, SoundExchange petitioned the CRJs to clarify the definition of Gross Revenues adopted in SDARS I. On December 9, 2014, the CRJs reopened the SDARS I proceedings, observing that SoundExchange's petition raised a threshold jurisdictional question that potentially constituted a novel material question of substantive law that, by statute, must be referred to the Register. In the order reopening proceedings, the CRJs asked the parties to file briefs addressing the CRJs' authority to issue a clarifying interpretation of its regulations. Sirius XM took the position that the Copyright Act or, in the alternative, the Administrative Procedure Act (''APA''), gave the CRJs such authority. SoundExchange disagreed, arguing that no statute gave the CRJs authority to clarify the regulations, and that the case should therefore be returned to the district court for resolution.

After considering the parties' responses, on March 9, 2015, the CRJs, acting pursuant to 17 U.S.C. 802(f)(1)(B), referred the following novel material questions of substantive law to the Register, enclosing the briefs the parties had filed:

(1) Do the Judges have jurisdiction under title 17, or authority otherwise, to interpret the regulations adopted in the captioned proceeding?

(2) If the Judges have authority to interpret regulations adopted in the course of a rate determination proceeding, is that authority time-limited?

(3) Would the answer regarding the Judges' jurisdiction or authority be different if the terms at issue regulated a current, as opposed to a lapsed, rate period?

II. Summary of Parties' Arguments

The parties' dispute is focused on around the first referred question. The Register understands this question to ask, in essence, whether the CRJs have the power to issue a clarifying interpretation of their regulations.

SoundExchange asserts that the provision cited by the district court, 17 U.S.C. 803(c)(4), does not give the CRJs authority to clarify the regulations at issue here. First, SoundExchange argues that resolution of legal ambiguity cannot properly be characterized as a correction of a ''technical or clerical'' error. Second, SoundExchange urges that the separate authority in section 803(c)(4) to ''modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination'' does not apply to this case. In particular, it argues that any modification of the definition of ''Gross Revenues'' would affect the *rates* of royalty payments, not the terms under which those payments are made, and that the definition of ''Gross Revenues'' is accordingly not a ''term.'' In addition, SoundExchange asserts that Sirius XM's decision to exclude certain revenues from its gross revenue calculation was not an ''unforeseen circumstance[ ]'' that would ''frustrate the proper implementation of [the] determination.''

Sirius XM, in contrast, asserts that section 803(c)(4) empowers the CRJs to interpret the SDARS I regulations, and amend them to prevent an interpretation that is at odds with copyright law or the intent of its earlier determination. According to Sirius XM, such an amendment can either be considered a ''technical amendment'' that prevents a mistaken interpretation of their determination, or a ''modification'' of the terms of the royalty payment in response to unforeseen circumstances. In response to SoundExchange's point that a modification of the Gross Revenues definition would constitute an impermissible change in rates, Sirius XM urges that ''rates'' refers only to the percentage-of-revenue rate in the CRJs' determination, and ''terms'' refers broadly to ''other aspects of the determination required to implement the rates.''

In the alternative, Sirius XM argues that if section 803(c)(4) did not give the CRJs sufficient authority to clarify the meaning of the regulations, the APA independently authorizes the CRJs to do so. Sirius XM notes that section 803(a)(1) instructs the CRJs to act in accordance with the APA, and that the APA includes a provision authorizing agencies to ''issue a declaratory order to

[2] *See generally* U.S. Copyright Office, *Copyright and the Music Marketplace* 53–54 (Feb. 2014).

terminate a controversy or remove uncertainty'' as part of formal adjudications. 5 U.S.C. 554(e). SoundExchange disputes that contention on the ground that, within the meaning of the APA, the CRJs engage in rulemakings, not adjudications, and therefore 5 U.S.C. 554(e) does not apply.

With respect to the remaining two questions, the parties agree that if the CRJs have authority to interpret regulations adopted in the course of a rate determination proceeding, that authority would not be time limited. In addition, they agree that the CRJs' continuing jurisdiction does not depend on whether a rate period is current or lapsed.

III. Register's Determination

Having considered the relevant statutory language and the input from the parties, the Register determines that the CRJs have jurisdiction under section 803(c)(4) of Title 17 to clarify the meaning of the regulations adopted in SDARS I. The Register also determines that this authority is not time-limited, and that the CRJs' authority is the same whether the regulations at issue apply to a current or lapsed rate period.

A. The CRJs' Continuing Jurisdiction Encompasses the Authority to Issue Clarifying Amendments to Written Determinations.

As noted above, under section 803(c)(4), the CRJs ''may issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination.'' 17 U.S.C. 803(c)(4). As an initial matter, the Register accepts the district court's conclusion that the meaning of the relevant regulatory provisions, and the application of those provisions to the particular fact pattern presented here, is uncertain. *See SoundExchange,* 2014 WL 4219591, at *4 (''[T]he gross revenue exclusions are ambiguous and do not, on their face, make clear whether Sirius XM's approaches were permissible under the regulations.'').

The Register concludes that the CRJs' power to ''correct any technical . . . errors'' in determinations encompasses the power to resolve ambiguity in the meaning of regulations adopted pursuant to those determinations.[3] Such a correction is ''technical'' in the sense that it merely clarifies existing regulations to ensure they are applied in the manner intended by the CRJs. As the district court appreciated, the CRJs are in the best position to provide this type of interpretive guidance, given their familiarity with the extensive record on which the regulations are based and their general ''technical and policy expertise.'' *SoundExchange,* 2014 WL 4219591 at *4. This approach is also consistent with general principles of administrative law, under which courts regularly defer to agencies' reasonable interpretations of ambiguous regulations. *See Auer* v. *Robbins,* 519 U.S. 452, 461 (1997). Section 803(c)(4) provides the administrative mechanism by which the CRJs can issue such interpretations.

This understanding of section 803(c)(4) also comports with the Register's prior reading of that provision. Specifically, the Register has construed section 803(c)(4) as providing the CRJs the authority to amend their regulations to conform with the Register's interpretation of the Copyright Act. In 2009, after the CRJs issued a determination setting the rates and terms of royalty payments for making and distribution of phonorecords of musical works under 17 U.S.C. 115, the Register exercised her statutory authority to correct certain legal errors in that determination. 74 FR 4537 (Jan. 6, 2009). In particular, the Register concluded that a number of regulatory terms that the CRJs had adopted were inconsistent with the Copyright Act, including certain terms related to digital phonorecord deliveries and the retroactivity of promotional royalty rates. *See* 73 FR at 4541–42. Although the Register lacked the authority actually to amend the regulations adopted by the CRJs, she concluded that the CRJs could ''codify the corrections identified and made herein by the Register'' by exercising their authority under section 803(c)(4). *Id.* at 4543. The CRJs subsequently relied on that authority to amend the regulations and excise the erroneous regulatory provisions. 74 FR 6832, 6833 (Feb. 11, 2009). The CRJs explained that doing so would ''clarify potential confusion facing users of the license at issue'' and ''promote an efficient administration of the applicable license.'' *Id.* These same rationales apply with equal force here.

B. The CRJs' Continuing Jurisdiction Is Not Subject to Time Limits, and Extends to Both Current and Lapsed Rate Periods.

The Register agrees with the parties that the CRJs' continuing jurisdiction authority is not subject to a time limit. Nothing in the text of section 803(c)(4) indicates a time limit. And, no other provision in Title 17 would otherwise impose a time limit on the CRJs' exercise of that authority. Furthermore, the scope of the CRJs' continuing jurisdiction authority is the same whether the terms at issue concern a current or lapsed rate period. Nothing in the text of section 803(c)(4), or any other provision in Title 17, differentiates between current and lapsed rate periods for purposes of the CRJs' exercise of continuing jurisdiction.

April 8, 2015

Maria A. Pallante,
Register of Copyrights and Director of the United States Copyright Office

[FR Doc. 2015–10305 Filed 5–1–15; 8:45 am]

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[3] As explained above, Sirius XM argues that the CRJs' power to ''modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination'' provides an alternate source of authority to clarify the SDARS I regulations. 17 U.S.C. 803(c)(4). SoundExchange contends, however, that the definition of ''Gross Revenues'' is not a ''term.'' For its part, the district court concluded that the definition was a term. *SoundExchange,* 2014 WL 4219591 at *5 (''Neither party is asking for a change to rates; only a clarification of terms.''). The Register need not resolve this issue, because the CRJs' separate power to ''correct any technical . . . errors'' provides a sufficient basis for the CRJs to act in this case. For the same reason, the Register need not address whether the APA separately authorizes the CRJs to clarify the SDARS I regulations.

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: April 27, May 4, 11, 18, 25, June 1, 8, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 27, 2015

Thursday, April 30, 2015

8:55 a.m.
Affirmation Session (Tentative)
DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), Docket No. 52–033 (Public Meeting) (Tentative)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

9 a.m.
Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: Jack Davis, 301—415–223)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of May 4, 2015

There are no meetings scheduled for the week of May 4, 2015.

Week of May 11, 2015—Tentative

There are no meetings scheduled for the week of May 11, 2015.

Week of May 18, 2015—Tentative

Tuesday, May 19, 2015

9 a.m.

Briefing on Cumulative Effects of Regulation and Risk Prioritization Initiatives (Public Meeting) (Contact: Steve Ruffin, 301- 415–1985)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, May 21, 2015

9 a.m.

Briefing on the Results of the Agency Action Review Meeting (Public Meeting) (Contact: Nathan Sanfilippo, 301–415–8744)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of May 25, 2015—Tentative

There are no meetings scheduled for the week of May 25, 2015.

Week of June 1, 2015—Tentative

There are no meetings scheduled for the week of June 1, 2015

Week of June 8, 205—Tentative

Thursday, June 11, 2015

10 a.m.

Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Edwin Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

Additional Information

By a vote of 4–0 on April 28 and 29, 2015, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that an Affirmation Session for DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), Docket No. 52–033, Mandatory Hearing Decision be held with less than one week notice to the public. The meeting is tentatively scheduled for April 30, 2015.

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: April 29, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–10384 Filed 4–30–15; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0103]

Information Collection: Renewal of NRC Form 590, Application/Permit for Use of the Two White Flint North (TWF) Auditorium

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites the public to comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The NRC is required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995. The information collection is entitled

''Renewal of NRC Form 590, Application/Permit for Use of the Two White Flint North (TWFN) Auditorium.''

DATES: Submit comments by July 6, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Tremaine Donnell, Office of Information Services, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0103 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0103. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0103 on this Web site.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at

1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15026A104. The supporting statement is in ADAMS under Accession No. ML1508A043.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2015–0103 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Renewal of NRC Form 590, Application/Permit for Use of the Two White Flint North (TWFN) Auditorium.

2. *OMB approval number:* 3150–0131.

3. *Type of submission:* Extension.

4. *The form number, if applicable: NRC Form 590.*

5. *How often the collection is required or requested: On occasion.*

6. *Who will be required or asked to respond:* Members of the public requesting use of the NRC Auditorium.

7. *The estimated number of annual responses: 1.*

8. *The estimated number of annual respondents: 1.*

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1 hour (1 request x 1 hour per request).

10. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission, the General Services Administration, and the NRC that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review and scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 29th day of April, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–10347 Filed 5–1–15; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Certification of Qualifying District of Columbia Service, RI 20–126, 3206–XXXX

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–XXXX, Certification of Qualifying District of Columbia Service Under Section 1905 of Public Law 111–84. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until July 6, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Retirement Services, Operations Support, Office of Personnel Management, Union Square Room 370, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, or sent by email to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–AC, Washington, DC 20503, Attention: Cyrus S. Benson or sent by email to *Cyrus.Benson@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–126 is used to certify that an employee performed certain service with the District of Columbia (DC) that qualifies under section 1905 of Pub. L. 111–84 for determining retirement eligibility. However, this service cannot be used in the computation of a retirement benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Certification of Qualifying District of Columbia Service Under Section 1905 of Public Law 111–84.

OMB Number: 3206–XXXX

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 1000.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2015–10288 Filed 5–1–15; 8:45 am]

BILLING CODE 6325–25–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from February 1, 2015, to February 28, 2015.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during February 2015.

Schedule B

91. The Office of Personnel Management (Sch. B, 213.3291)

(b) Federal Executive Institute—No more than 57 positions of faculty members at grades GS–13 through GS–15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1, 2, or 3 year increments.

Schedule C

The following Schedule C appointing authorities were approved during February 2015.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF COMMERCE	Immediate Office of Secretary	Special Assistant	DC150054	2/2/2015
	Executive Assistant	DC150056	2/2/2015	
	Bureau of the Census	Chief of Congressional Affairs	DC150059	2/4/2015
	Bureau of Industry and Security	Special Advisor	DC150060	2/4/2015
	Office of Assistant Secretary for Industry and Analysis.	Special Advisor	DC150057	2/5/2015
	Office of Policy and Strategic Planning.	Policy Advisor	DC150065	2/23/2015
	International Trade Administration	Senior Advisor	DC150061	2/25/2015
	Office of the General Counsel	Counselor to the General Counsel	DC150071	2/25/2015
Consumer Product Safety Commission.	Office of Commissioners	Special Assistant (Legal)	PS150001	2/9/2015
	Executive Assistant	PS150003	2/23/2015	
Department of Defense	Washington Headquarters Services.	Defense Fellow	DD150062	2/4/2015
	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities).	Chief of Staff for Stability and Humanitarian Affairs.	DD150067	2/18/2015
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant to the Assistant Secretary of Defense for Asian and Pacific Security Affairs.	DD150038	2/19/2015
	Office of Assistant Secretary of Defense (Public Affairs).	Director Digital Media	DD150069	2/24/2015
Department of the Air Force	Office of the Under Secretary	Special Assistant	DF150024	2/24/2015
Department of Education	Office of Career Technical and Adult Education.	Special Assistant (2)	DB150042	2/3/2015
			DB150044	2/6/2015
	Office of Legislation and Congressional Affairs.	Special Assistant (2)	DB150045	2/18/2015
			DB150052	2/20/2015
	Office of the Secretary	Special Assistant	DB150043	2/6/2015
		Special Advisor, Strategic Partnership.	DB150047	2/19/2015
		Confidential Assistant	DB150049	2/19/2015
		Deputy White House Liaison	DB150050	2/19/2015
Department of Energy	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE150034	2/4/2015

Agency name	Organization name	Position title	Authorization number	Effective date
	National Nuclear Security Administration.	Director, Public Affairs National Nuclear Security Administration.	DE150036	2/5/2015
	Office of Assistant Secretary for Energy Efficiency and Renewableeecial Assistant.	DE150037	2/18/2015	
Federal Energy Regulatory Commission.	Federal Energy Regulatory Commission.	Confidential Assistant	DR150003	2/10/2015
	Office of the Chairman	Confidential Assistant	DR150009	2/19/2015
General Services Administration	Office of the Administrator	Special Assistant	GS150015	2/24/2015
Department of Health and Human Services.	Office of the Secretary	Advance Lead	DH150067	2/6/2015
	Office of Refugee Resettlement/ Office of the Director.	Chief of Staff	DH150073	2/20/2015
Department of Homeland Security	Office of the Assistant Secretary for Policy.	Chief of Staff	DM150061	2/4/2015
	Office of the Under Secretary for National Protection.	Confidential Assistant	DM150063	2/18/2015
	Office of the Under Secretary for Science and Technology.	Special Assistant to the Under Secretary for Science and Technology.	DM150064	2/19/2015
Department of Housing and Urban Development.	Office of Congressional and Intergovernmental Relations.	Deputy Assistant Secretary for Legislative Affairs.	DU150021	2/11/2015
Department of Justice	Office of the Associate Attorney General.	Counsel and Chief of Staff	DJ150041	2/4/2015
Department of Labor	Office of the Secretary	Executive Assistant	DL150029	2/13/2015
Policy Advisor	DL150030	2/13/2015.		
Office of Management and Budget	Office of the Director	Confidential Assistant	BO150014	2/3/2015
	Office of Management and Budget	Confidential Assistant	BO150012	2/9/2015
Office of Science and Technology Policy.	Office of Science and Technology Policy.	Executive Assistant	TS150005	2/5/2015
Small Business Administration	Office of International Trade	Senior Advisor for International Trade.	SB150017	2/11/2015
Department of State	Office of the Chief of Protocol	Protocol Officer	DS150041	2/6/2015
Department of Veterans Affairs	Office of the Secretary and Deputy.	Special Assistant/White House Liaison.	DV150015	2/13/2015

The following Schedule C appointing authorities were revoked during February 2015.

Agency name	Organization name	Position title	Authorization number	Vacate date
Department of Commerce	Office of Assistant Secretary for Industry and Analysis.	Special Assistant	DC110088	2/7/2015
	Immediate Office of the Secretary	Executive Assistant to the Secretary.	DC140007	2/7/2015
	Office of the Chief of Staff	Special Assistant to the Chief of Staff.	DC140158	2/7/2015
	Office of Policy and Strategic Planning.	Special Assistant	DC130089	2/21/2015
Office of the Secretary Of Defense	Office of the Under Secretary of Defense (Comptroller).	Special Assistant to the Deputy Under Secretary of Defense (Budget and Appropriations Affairs).	DD100185	2/21/2015
Department of Health and Human Services.	Health Resources and Services Administration Office of the Administrator.	Special Assistant	DH110128	2/18/2015
Department of Homeland Security	Office of the Assistant Secretary for Policy.	Director, Homeland Security Advisory Council.	DM140101	2/7/2015
Department of Justice	Office of the Associate Attorney General.	Counsel and Chief of Staff	DJ120096	2/7/2015
	Civil Division	Chief of Staff	DJ140087	2/7/2015
Department of Labor	Office of Public Affairs	Press Secretary	DL130053	2/21/2015
National Endowment for the Humanities.	National Endowment of the Humanities.	Director of Communications	NH090007	2/7/2015
Office of Management and Budget	Office of the Director	Senior Advisor	BO140008	2/21/2015
Small Business Administration	Office of the Administrator	White House Liaison	SB130018	2/14/2015
	Office of Entrepreneurial Development.	Director of Clusters and Skills Initiatives.	SB140011	2/21/2015
Department of the Treasury	Office of the Secretary	Deputy White House Liaison	DY140032	2/18/2015

Agency name	Organization name	Position title	Authorization number	Vacate date
	Special Assistant	DY140022	2/18/2015	

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2015–10300 Filed 5–1–15; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System Board of Actuaries

AGENCY: U.S. Office of Personnel Management.

ACTION: Establishment of advisory committee charter.

SUMMARY: The U.S. Office of Personnel Management announces the establishment of the charter for the Civil Service Retirement System Board of Actuaries. The Board shall provide independent advice and recommendations on matters relating to the Civil Service Retirement and Disability Fund (CSRDF), the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS).

FOR FURTHER INFORMATION CONTACT: Gregory Kissel, Senior Actuary for Retirement Programs, Office of Personnel Management, 1900 E St. NW., Room 4307, Washington, DC 20415. Phone (202) 606–0722 or email at *actuary@opm.gov.*

SUPPLEMENTARY INFORMATION: The charter for the Civil Service Retirement System Board of Actuaries publishes as follows:

1. Committee's Official Designation: The Committee will be known as the Board of Actuaries of the Civil Service Retirement System (''the Board'').

2. Authority: The Director of the Office of Personnel Management (OPM) is establishing the Board pursuant to 5 U.S.C. 8347(f) and also in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

3. Objectives and Scope of Activities: The Board, through the OPM Office of Planning and Policy Analysis (PPA), shall provide the OPM Director with independent advice and recommendations on matters relating to the Civil Service Retirement and Disability Fund (CSRDF), the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), as set out in paragraph four below.

4. Description of Duties: The Board shall furnish its advice and opinion on matters referred to it by OPM, and recommend such changes as in the Board's judgment are necessary to protect the public interest and maintain the Retirement Systems on a sound financial basis and, in doing so, shall:

a. Report annually on the actuarial status of the Retirement Systems;

b. Review actuarial valuations no less often than once every five years, or more often if considered necessary by OPM; and

c. In response to an agency appeal of an amount payable for FERS under 5 U.S.C. 8423(c), and in accordance with the regulations established under 5 CFR 841 Subpart D, review the computations of OPM and recommend any adjustment with respect to any such amount which the Board determines appropriate.

5. Agency or Official to Whom the Committee Reports: The Board shall report to the OPM Director, through OPM PPA. The OPM Director may act upon the Board's advice and recommendations.

6. Support: OPM shall provide administrative services and support as deemed necessary for the Board's performance of its functions.

7. Estimated Annual Operating Costs and Staff Years: Based on one expected annual meeting of the Board, the estimated annual operating cost, to include reimbursement for travel, meetings, and administrative support, is approximately $30,000. The estimated annual personnel cost to OPM is 0.3 FTEs. Costs may exceed this estimate if additional ad hoc meetings are needed (*e.g.* due to a statutory change or an agency appeal).

8. Designated Federal Officer: OPM's Senior Actuary for Retirement Programs serves as the Board's Designated Federal Officer (DFO). OPM's Chief Actuary serves as the Board's Alternate DFO.

The Board's DFO, or Alternate DFO, is required to be in attendance at all meetings of the Board for the entire duration of each and every meeting. The DFO, or the Alternate DFO, shall call all meetings of the Board; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or OPM policies and procedures.

9. Estimated Number and Frequency of Meetings: The Board shall meet at the call of the Board's DFO, or Alternate DFO, in consultation with the Board's Chair. The estimated number of Board meetings is one per year.

10. Duration: Continuing. 5 U.S.C. 8347(f) provides for a permanent role for the Board.

11. Termination: The Board shall terminate upon rescission of 5 U.S.C. 8347(f) and is subject to biennial review and will become inactive 2 years from the date the charter is filed, unless prior to that date, the charter is renewed in accordance with Section 14 of the FACA. The Board will not meet or take any action without a valid current charter.

12. Membership and Designation: The Board shall be comprised of three members who are appointed by the OPM Director from among professional actuaries who are members of the American Academy of Actuaries and qualified under actuarial standards of practice to issue a statement of actuarial opinion on defined benefit retirement plans.

Board members appointed by the OPM Director, who are not full-time or permanent part-time Federal employees, shall be appointed as experts and consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee (SGE) members, and shall, pursuant to 5 U.S.C. 8347(f), serve with compensation, to include official Board-related travel and per diem. A member of the Board who is not an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay than is currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, U.S.C., for each day the member is engaged in the performance of the duties of the Board.

Board members appointed by the OPM Director, who are full-time or permanent part-time Federal employees, shall be appointed, pursuant to 41 CFR 102–3.130(a), to serve as regular government employee (RGE) members.

Each Board member is appointed to provide advice to the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

13. Subcommittees: The Board, in coordination with the DFO, has the authority to create subcommittees or working groups.

14. Recordkeeping: The records of the Board shall be handled according to section 2, General Records Schedule 26, and governing OPM policies and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. 552, as amended).

U.S. Office of Personnel Management.

Katherine L. Archuleta,

Director.

[FR Doc. 2015–10297 Filed 5–1–15; 8:45 am]

BILLING CODE 6325–63–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17Ac2–2 and Form TA–2, SEC File No. 270–298, OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the existing collection of information provided for in Rule 17Ac2–2 (17 CFR 240.17Ac2–2) and Form TA–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17Ac2–2 and Form TA–2 under the Exchange Act require transfer agents to file an annual report of their business activities with the Commission. These reporting requirements are designed to ensure that all registered transfer agents are providing the Commission with sufficient information on an annual basis about the transfer agent community and to permit the Commission to effectively monitor business activities of transfer agents.

The amount of time needed to comply with the requirements of amended Rule 17Ac2–2 and Form TA–2 varies. Of the total 429 registered transfer agents, approximately 9.1% (or 39 registrants) would be required to complete only questions 1 through 3 and the signature section of amended Form TA–2, which the Commission estimates would take each registrant approximately 30 minutes, for a total burden of 19.5 hours (39 × .5 hours). Approximately 26.7% of registrants (or 115 registrants) would be required to answer questions 1 through 5, question 11 and the signature section, which the Commission estimates would take approximately 1 hour and 30 minutes, for a total of 172.5 hours (115 × 1.5 hours). Approximately 64.2% of the registrants (or 275 registrants) would be required to complete the entire Form TA–2, which the Commission estimates would take approximately 6 hours, for a total of 1,650 hours (275 × 6 hours). The aggregate annual burden on all 429 registered transfer agents is thus approximately 1,842 hours (19.5 hours + 172.5 hours + 1,650 hours) and the average annual burden per transfer agent is approximately 4.3 hours (1,842 ÷ 429).

This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the

following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 28, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–10285 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74825; File No. SR–NYSEMKT–2015–27]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Amend the Sixth Amended and Restated Operating Agreement of the Exchange

April 28, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 17, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Sixth Amended and Restated Operating Agreement of the Exchange (''Operating Agreement'') to (1) establish a Regulatory Oversight Committee (''ROC'') as a committee of the board of directors of the Exchange (the ''Board''), and (2) remove the requirement that the independent directors that make up the majority of the Board also be directors of Intercontinental Exchange, Inc., the Exchange's parent company. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Operating Agreement to (a) establish a ROC as a committee of the Board, and (b) remove the requirement that the independent directors that make up the majority of the Board also be directors of Intercontinental Exchange, Inc. (''ICE''), the Exchange's parent company.

Creation of a ROC

The proposed ROC would have the responsibility to independently monitor the Exchange's regulatory operations.[4] To effectuate this change, the Exchange proposes to amend Section 2.03(h) of the Operating Agreement to add a subsection (ii) providing for a ROC and delineating its composition and functions. The proposed new Section 2.03(h)(ii) of the Operating Agreement would be substantially similar to Article III, Section 5(c) of the By-Laws of the NASDAQ Stock Market LLC (''Committees Composed Solely of Directors'').[5]

In particular, Section 2.03(h)(ii) would provide that the Board shall appoint a ROC on an annual basis. Proposed Section 2.03(h)(ii) would describe the composition of the ROC. Proposed Section 2.03(h)(ii) would also describe the functions and authority of the ROC. The proposed ROC's responsibilities would be to:

- Oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- Assess the Exchange's regulatory performance; and
- Advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.[6]

In furtherance of these functions, the proposed new subsection of the Operating Agreement would provide the ROC with the authority and obligation to review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities. Under the proposed amendment, the ROC would be charged with meeting regularly with the Chief Regulatory Officer (''CRO'') in executive session and, in consultation with the Exchange's Chief Executive Officer, establishing the goals, assessing the performance, and recommending the CRO's compensation. Finally, under the proposed rule, the ROC would be responsible for keeping the Board informed with respect to the foregoing matters.[7]

The Exchange proposes that the ROC would consist of at least three members, each of whom would be a director of either the Exchange or of NYSE Regulation and who satisfies the independence requirements of the Exchange.[8] The Exchange believes that a ROC comprised of at least three independent members is appropriate. The size and composition of the proposed ROC would be largely the same as that of the ROCs of other self-regulatory organizations (''SROs''), with the exception of the possibility to include independent directors of NYSE Regulation on the ROC.[9] A ROC with at least three independent directors has been recognized as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.[10]

Further, proposed Section 2.03(h)(ii) would provide that the Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause. Proposed Section 2.03(h)(ii) would also provide that a failure of the member to qualify as independent under the independence policy would constitute a basis to remove a member of the ROC for cause. Similar authority is found in the bylaws governing the ROCs of other SROs.[11] In addition, proposed Section 2.03(h)(ii) would provide that, if the term of office of a ROC committee member terminates under this section, and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. Once again, this is consistent with the rules and bylaws of

[4] NYSE Regulation, Inc. (''NYSE Regulation''), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC (''NYSE''), performs all of the Exchange's regulatory functions pursuant to an intercompany Regulatory Services Agreement (''RSA'') that gives the Exchange the contractual right to review NYSE Regulation's performance. NYSE Regulation performs regulatory functions for the Exchange's affiliate NYSE Arca, Inc. (''NYSE Arca'') pursuant to a similar intercompany RSA. NYSE Arca has submitted a similar proposal to establish a ROC with primary responsibility for overseeing regulatory operations. *See* SR–NYSEArca-2015–29.

[5] *See* Securities Exchange Act Release No. 34–53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (''Release No. 34–53128'') (order granting application of NASDAQ Stock Market LLC (''NASDAQ'') for registration as a national securities exchange). As noted below, members of the NASDAQ ROC must satisfy NASDAQ's public director requirements in addition to its independent director requirements. NASDAQ defines a public director as ''a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.'' NASDAQ Bylaws, Article I(y). The Exchange does not have separate public director requirements and does not distinguish between public and independent directors but notes that, like the NASDAQ public director requirement, in order to meet the Exchange's independence requirements, a director must ''not have any material relationships'' with ICE and its subsidiaries. In addition, among other limitations, in order to be found independent, a director may not be a member, allied member, or employed by a member organization of the Exchange. *See* Independence Policy of Board of Directors of NYSE MKT LLC, available at *http://wallstreet.cch.com/MKT/pdf/independence_policy.pdf. See also* Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17; SR–NYSEArca-2012–59; SR–NYSEMKT–2012–07) (approving NYSE MKT's director independence policy).

[6] These three core responsibilities of the proposed ROC would be substantially similar to those of other SROs' ROCs. *See, e.g.,* NASDAQ Bylaws, Article III, Section 5 (''NASDAQ Bylaws''); Securities Exchange Act Release No. 34–58375 (August 18, 2008), 73 FR 49498, 49502 (August 21, 2008) (File No. 10–182) (''Release No. 34–58375'') (approving application of BATS Exchange, Inc. (''BATS'') seeking registration as a national securities exchange); Securities Exchange Act Release No. 34–61698 (March 10, 2010), 75 FR 13151, 13161 (March 12, 2010) (''Release No. 34–61698'') (approving application of EDGX Exchange, Inc. and EDGA Exchange, Inc., seeking registration as a national securities exchange); and Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

[7] The obligations of the proposed ROC would be substantially similar to those of other SROs' ROCs. *See, e.g.,* NASDAQ Bylaws, Article III, Section 5; Bylaws of NASDAQ OMX PHLX LLC, Article V, Section 5–2; Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c).

[8] The Exchange's independence requirements are set forth in the Independence Policy of the Board of Directors of the Exchange. *See supra,* note 5.

[9] *See e.g.,* NASDAQ By-laws, Article III, Section 5(c) (specifying a ROC comprising three directors who must satisfy both NASDAQ's public director and independent director requirements); Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c) (''BATS Bylaws'') (specifying a ROC comprising three non-industry (*i.e.,* public) directors); and Chicago Board Options Exchange, Incorporated (''CBOE'') Bylaws, Article IV, Section 4.5 (specifying a ROC of at least three directors all of whom shall be ''non-industry'' directors).

[10] *See, e.g.,* Release No. 34–53128, 71 FR at 3555 (NASDAQ); Release No. 34–58375, 73 FR at 49502 (BATS); Securities Exchange Act Release No. 34–61152 (December 10, 2009), 74 FR 66699, 66704–705 (December 16, 2009) (File No. 10–191) (approving application of C2 Options Exchange, Incorporated, seeking registration as a national securities exchange); and Release No. 34–61698, 75 FR at 13161.

[11] *See e.g.,* BATS Bylaws, Article V, Section 2(a) (''the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board.''); Second Amended and Restated By-laws of National Stock Exchange, Inc., Article V, Section 5.2 (same).

other SROs.[12] Finally, the Exchange proposes to add text to Section 2.03(h) providing that vacancies in the membership of any board committee would be filled by the Exchange Board.[13]

The Exchange proposes that members of the ROC could be independent directors of either the Exchange Board or the NYSE Regulation board. The proposed eligibility of independent directors of the NYSE Regulation board for the ROC would allow individuals to be members of the ROC who have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs.

The Exchange believes that the proposed rule change creating an independent board committee to oversee the adequacy and effectiveness of the performance of its self-regulatory responsibilities is consistent with previously approved rule changes for other self-regulatory organizations and would enable the Exchange to harmonize its corporate governance with that of its industry peers.[14] Moreover, the Exchange believes that the proposed adoption of a ROC would ensure the continued independence of the regulatory process.[15] The fundamental hallmarks of regulatory independence—determinations regarding the Exchange's regulatory plan, programs, budget and staffing made by individuals independent of Exchange management and a CRO having general supervision of the regulatory operations of the Exchange and reporting to a ROC—are integral to the proposal.[16]

Exchange Independent Directors

Section 2.03(a)(i) of the Operating Agreement, which governs Board composition, provides that a majority of the Exchange's directors shall be U.S. Persons[17] who are members of the board of directors of ICE that satisfy the Exchange's independence requirements.[18] Such directors are defined as ''ICE Independent Directors'' in the Operating Agreement. The Exchange proposes to amend Section 2.03(a)(i) of the Operating Agreement to remove the requirement that the independent directors that make up the majority of the Board also be directors of ICE, to redefine ''ICE Independent Directors'' to remove the reference to ICE, and to make conforming changes in both Section 2.03(a)(i) and Section 2.03(a)(ii). The majority of directors of the Exchange Board would continue to satisfy the company independence policy.

The Exchange believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would allow the Exchange to broaden the pool of potential Board members, resulting in a more diversified Board membership, while still ensuring the directors' independence. Eliminating the requirement that the independent directors of the Exchange also be directors of ICE would also make the Exchange's Board requirements more consistent with those of its affiliate NYSE Arca, which do not require any of its directors to be directors of ICE.[19]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[20] in general, and with Section 6(b)(1)[21] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed change would create an independent board committee to oversee the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities. The proposed ROC, similar in composition and functions to the approved ROCs of other SROs, would be designed to oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance effectiveness and plans.

As noted, the Exchange proposes that members of the ROC could be independent directors of either the Exchange Board or the NYSE Regulation board. The Exchange believes that proposing to allow independent directors of the NYSE Regulation board to be eligible for the ROC would provide the choice to include these individuals whose have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs. Accordingly, the Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act. The Exchange therefore believes that approval of the amendment to the Bylaws [sic] is consistent with Section 6(b)(1) of the Exchange Act.

Further, the Exchange believes its proposed change to remove the requirement that the independent directors that make up the majority of the Exchange Board also be ICE directors and redefine ''ICE Independent Directors'' to remove the reference to ICE is consistent with the Exchange Act. As noted above, this change would allow the Exchange to consider including individuals on its Board that are not already members of the ICE board. The Exchange believes that a more diversified pool of Board members would allow it to include individuals on its Board that could focus on the unique responsibilities of an SRO. This change would also make the Exchange's Board requirements more consistent with those of its affiliate NYSE Arca, which does not require its directors to be ICE directors. For these reasons, the

[12] *See e.g.,* NASDAQ Bylaws, Article III, Section 2(b).

[13] NASDAQ has the same provision. *See* Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC, Section 9(g).

[14] *See* NASDAQ Bylaws, Article III, Section 5(c); BATS Bylaws, Article V, Section 6(c).

[15] *See, e.g.,* Securities Exchange Act Release No. 34–48946 (December 17, 2003), 68 FR 74678, 74687 (August 21, 2008) (SR–NYSE–2003–34).

[16] *See, e.g.,* Release No. 34–53128, 71 FR at 3555. In connection with its acquisition by the NYSE in 2008, the Exchange's ROC was eliminated and the Exchange contracted with NYSE Regulation to perform all of its regulatory functions. *See* note 4, *supra.* The approval order noted that ''the governance of NYSE Regulation will provide a comparable level of independence that a ROC would provide.'' *See* Securities Exchange Act Release No. 34–58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008–62, SR–NYSE–2008–60) (''Amex Approval Order'').

[17] Pursuant to Section 2.03(a)(1) [sic] of the Operating Agreement, a director is a ''U.S. Person'' if, as of the date of his or her most recent election or appointment to the Board, his or her domicile is, and for the immediately preceding 24 months has been, the United States. The Exchange does not propose to amend this requirement.

[18] *See* note 5, *supra.*

[19] *See* Amended and Restated NYSE Arca Bylaws, Article III, Section 3.02. The Exchange notes that its affiliate NYSE has also submitted a proposal to amend its Operating Agreement to remove the requirement that the independent directors that make up the majority of the Exchange Board also be directors of ICE, and to redefine ''ICE Independent Directors'' to remove the reference to ICE. *See* SR–NYSE–2015–16.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(1).

Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members. The Exchange therefore believes that approval of the proposed is consistent with Section 6(b)(1) of the Exchange Act.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [22] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As discussed above, the Exchange believes that the proposed creation of a ROC composed of independent directors would align the Exchange's corporate governance practices with other SROs that have adopted a ROC to monitor the adequacy and effectiveness of the regulatory program, assess regulatory performance, and assist the Board in reviewing the regulatory plan and the overall effectiveness of the regulatory function. Moreover, the Exchange believes that the proposed ROC structure would also sufficiently ''insulate'' the regulatory functions from the Exchange's ''market and other commercial interests'' in order for the Exchange to carry out its regulatory obligations.[23] The Exchange believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would allow the Exchange to include individuals on its Board that have expertise it believes is necessary for its unique role as an SRO, because not all of the independent directors would have to be directors of ICE. The Exchange believes that the proposed rule change is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The independent oversight of the Exchange's regulatory functions by the proposed ROC is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange's Board.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–27and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10312 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78f(b)(5).

[23] Release No. 34–53128, 71 FR at 3556.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74822; File No. SR–BX–2015–023]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. Relating to Fees, Dues and Other Charges

April 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VI, Section 16, entitled ''Fees and Charges.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter VI, Section 16, entitled ''Fees and Charges.'' Today, the Exchange's Rule at Chapter VI, Section 16 discusses participation Fees and notes that the Board in its discretion may fix participations fees payable by Options Participants on a quarterly basis.[3] Also, Options Participants shall pay a fee for each transaction they execute on BX, as may be determined by the Board in its discretion. The Board may prescribe different or no fees for different types of transactions conducted on BX.[4] The Board may fix and impose other fees, assessments or charges to be paid to [sic] Options Participants or by classes of Options Participants with respect to applications, registrations, approvals, use of BX and Trading System facilities or other services or privileges granted.[5] Finally, an Options Participant that does not pay any fees, assessments, charges, fines or other amounts due to BX within thirty (30) days after they have become due and payable shall be reported to the Board or its delegate which may, after giving reasonable notice to the Options Participant of such arrearages, suspend the Options Participant until payment is made or terminate the Options Participant's participation on BX. An associated person of an Options Participant who fails to pay any fine or other amounts due to BX within thirty (30) days after such amount has become due and payable and after reasonable notice of such arrearages, may be suspended from association with an Options Participant until payment is made.[6]

The Exchange is proposing to amend the title of Chapter VI, Section 16 to ''Fees, Dues and Other Charges'' and adopt the rule text of current NASDAQ OMX PHLX LLC (''Phlx'') Rule 52 into current Chapter VI, Section 16. The Exchange desires to harmonize Chapter VI, Section 16 with Phlx Rule 52.

The new rule text would continue to permit the Board of Directors to have the power to fix fees. The proposed new rule would permit the Board: (i) to establish, assess and levy such fees, dues and other charges (including, without limitation, any extraordinary assessments) upon members and any other persons using the facilities or services of the Exchange, and upon applicants for and persons being admitted, registered, qualified and/or initiated to any such status, in each case as the Board of Directors may from time to time establish by resolution or in the Rules of the Exchange (which shall be deemed to include any schedule of fees, dues, other charges and penalties as may be in effect from time to time), (ii) to establish rebates, credits and discounts with respect to any of the foregoing, (iii) to establish programs whereby the Exchange shares or permits any person to participate in any identified source of revenues (less any expenses or other charges as the Exchange shall determine) of the Exchange, (iv) to provide for the direct reimbursement to the Exchange of any cost, expense or category thereof, and (v) except insofar as otherwise specified or provided for in the By-Laws, to establish and assess penalties for failure to pay any fees, dues or charges owed to the Exchange, including, without limitation, termination of membership (which membership may be reissued) and forfeiture of all rights as a member. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to the assessment of fees, dues, other charges and penalties authorized in accordance with this Section.[7] The Exchange believes that the proposed rule text includes a more exhaustive list of powers that the Board, or its delegate, may exercise with respect to fees.

The Board of Directors may also, from time to time, fix and impose charges upon members, measured by their respective net commissions on transactions effected on the Exchange. Such charges shall be payable at such times and shall be collected in such manner as may be determined by the Board of Directors.[8] The Exchange believes that this rule text is more expansive than the rule text in current rule Chapter VI, Section 16 and provides the board with additional flexibility in imposing fees. Participants shall abide by the provisions of the Exchange's By-Laws and the Rules, which shall include, without limitation, the obligation to pay all applicable fees, dues and other charges imposed thereon by the By-Laws or the Rules of the Exchange.[9] Participants today are obligated to abide by the provisions of the Exchange's By-Laws and the Rules and pay all applicable fees, dues and other charges imposed thereon by the By-Laws or the Rules of the Exchange. This provision does not impose any new obligations on Participants.

Finally, the Board of Directors or their designee may suspend or terminate, after due notice, any permit or rights of any Participant or employee thereof using facilities or services of the Exchange, or enjoying any of the privileges therein, who shall not pay dues, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions in accordance with the Rules of the Exchange.[10] Today, the Exchange has the power to suspend Participants as noted in current rule Chapter VI, Section 16. The Exchange believes that this new provision provides the Board with greater flexibility in both suspending and now terminating Participants for failure to pay fees. The Exchange's Rules today provide a process for the suspension, cancellation and bar of its members.[11]

[3] *See* Chapter VI, Section 16(a).

[4] *See* Chapter VI, Section 16(b).

[5] *See* Chapter VI, Section 16(c).

[6] *See* Chapter VI, Section 16(d).

[7] *See* proposed new Chapter VI, Section 16(a).

[8] *See* proposed new Chapter VI, Section 16(b).

[9] *See* proposed new Chapter VI, Section 16(c).

[10] *See* proposed new Chapter VI, Section 16(d).

[11] *See* BX Rule 9553, entitled ''Failure to Pay Exchange Dues, Fees and Other Charges,'' specifies

Continued

The Exchange is not proposing to adopt the provisions of Phlx Rule 52(e) as those provisions apply today to BX Participants.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that these proposed rule changes will harmonize the BX's Rules related to fees with that of Phlx.

The Exchange's process for billing and collecting fees on BX today is the same process which exists on Phlx. The Exchange therefore desires to adopt Rule 52 to better describe the Board's powers and the obligations of Participants with respect to fees. The Exchange believes that this new provision provides the Board with greater flexibility in both suspending and now terminating Participants for failure to pay fees. The Exchange's By-Laws at Article IX, Section 4 provide the Board with authority to fix and levy the amount of fees assessed to BX members and Rule 9553 contemplates the ramifications and process by which members are notified and sanctioned for a failure to pay such fees.

The adoption of an Exchange Rule similar to Phlx Rule 52 will align the BX Rules with that of Phlx, with respect to fees, and reflect the current process which exists at both exchanges. The new text adds clarity to the BX Rules and better reflects the current process. The Exchange believes that the adoption of the new rule text will provide Participants with clear guidelines for the payment of fees and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule text does not impose an undue burden on competition, rather it seeks to clarify the power of the Exchange's Board and the manner in which the Exchange manages the assessment of fees. BX Participants will all be subject to the same obligations as specified in the proposed rule with respect to fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–BX–2015–023 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–023 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10282 Filed 5–1–15; 8:45 am]

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the process for suspension, cancellation and bar applicable to BX members.

[12] *See* BX Rule 8320, entitled ''Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay.''

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Cedar Creek Mines Ltd., General Kinetics Incorporated, ProDigital Film Studios, Inc. (a/k/a ProDigital Film Labs, Inc.), SendTec, Inc., and Specialized Services, Inc. (n/k/a Exergetic Energy, Inc.); Order of Suspension of Trading

April 30, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cedar Creek Mines Ltd. because it has not filed any periodic reports since the period ended February 28, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of General Kinetics Incorporated because it has not filed any periodic reports since the period ended November 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ProDigital Film Studios, Inc. (a/k/a ProDigital Film Labs, Inc.) because it has not filed any periodic reports since the period ended June 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SendTec, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Specialized Services, Inc. (n/k/a Exergetic Energy, Inc.) because it has not filed any periodic reports since the period ended September 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 30, 2015, through 11:59 p.m. EDT on May 13, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–10438 Filed 4–30–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Eden Energy Corp. and Fifth Season International, Inc., Order of Suspension of Trading

April 30, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eden Energy Corp. because it has not filed any periodic reports since the period ended June 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fifth Season International, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 30, 2015, through 11:59 p.m. EDT on May 13, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–10437 Filed 4–30–15; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74824; File No. SR–NYSEARCA–2015–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Exchange's Bylaws to Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange

April 28, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 17, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rules 3.1 and 3.3 and section 4.01(a) of the Exchange's Bylaws to establish a Regulatory Oversight Committee (''ROC'') as a committee of the board of directors of the Exchange (the ''Board''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a ROC as a committee of the Board with the responsibility to independently monitor the Exchange's regulatory operations.[3] To effectuate this change, the Exchange proposes to amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Bylaws of the Exchange.

Rule 3.1(a) provides the Board with authority to establish one or more committees consisting of one or more

[3] NYSE Regulation, Inc. (''NYSE Regulation''), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC (''NYSE''), performs all of the Exchange's regulatory functions pursuant to an intercompany Regulatory Services Agreement (''RSA'') that gives the Exchange the contractual right to review NYSE Regulation's performance. NYSE Regulation performs regulatory functions for the Exchange's affiliate NYSE MKT LLC (''NYSE MKT'') pursuant to a similar intercompany RSA. NYSE MKT has submitted a similar proposal to establish a ROC with primary responsibility for overseeing regulatory operations. *See* SR–NYSEMKT–2015–27.

directors of the Exchange (each, a ''Board Committee''). Rule 3.3 specifies existing Board Committees. The Exchange proposes to amend Rule 3.3 to provide for a ROC and delineate its composition and functions. The proposed new rule text would be substantially similar to Article III, section 5(c) of the By-Laws of the NASDAQ Stock Market LLC (''Committees Composed Solely of Directors'')[4] and Article V, section 6(c) of the Third Amended and Restated Bylaws of BATS Exchange, Inc. (''BATS'') (''BATS Bylaws'').[5]

In particular, proposed Rule 3.3(a)(2)(A) would provide that the Board shall appoint a ROC on an annual basis. Proposed Rule 3.3(a)(2)(B) would describe the composition of the ROC. The Exchange proposes that the ROC would consist of at least three members, each of whom would be a public director of the Exchange or a director of NYSE Regulation who satisfies the public director requirements set forth in section 3.02(a) of the Bylaws of the Exchange.[6] The Exchange believes that the requirement for ROC members to be public directors ensures the independence of these members. The Exchange further believes that a ROC comprised of at least three members is appropriate. The size and composition of the proposed ROC would be largely the same as that of the ROCs of other self-regulatory organizations (''SROs''),[7] with the exception of the possibility to include directors of NYSE Regulation who meet the public director requirements.[8] A ROC with at least three members satisfying the exchange's independence requirements has been recognized as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.[9]

Further, proposed Rule 3.3(a)(2)(B) would provide that the Board may, on affirmative vote of a majority of directors, at any time remove any member of the ROC for cause. Proposed Rule 3.3(a)(2)(B) would also provide that a failure of the member to qualify as a public director shall constitute a basis to remove a member of the ROC for cause. Similar authority is found in the bylaws governing the ROCs of other SROs.[10] Finally, proposed Rule 3.3(a)(2)(B) would provide that, if the term of office of a ROC committee member terminates under this section, and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. Once again, this is consistent with the rules and bylaws of other SROs.[11]

Proposed Rule 3.3(a)(2)(C) would describe the functions and authority of the proposed ROC. The proposed ROC's responsibilities would be to:

- Oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.[12]

In furtherance of these functions, the proposed rule would provide the ROC with the authority and obligation to review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities. Moreover, under the proposed rule, the ROC would be charged with meeting regularly with the Chief Regulatory Officer (''CRO'') in executive session and, in consultation with the Exchange's Chief Executive Officer, establishing the goals, assessing the performance, and recommending the CRO's compensation. Finally, under the proposed rule, the ROC would be responsible for keeping the Board informed with respect to the foregoing matters.[13]

Finally, the Exchange proposes to amend Article IV, section 4.01 of its Bylaws governing board committees. Specifically, the Exchange proposes to add references to the proposed ROC to subsection (a) of Section 4.01. Further, the Exchange proposes to add ''Except as otherwise provided in the Rules'' to the clause in section 4.01(a) that requires each board committee to be comprised of at least 50% public directors because, under the proposed changes to Rules 3.1 and 3.3, the ROC may include directors of NYSE Regulation. Lastly, the Exchange proposes to add text to section 4.01(a)

[4] *See* Securities Exchange Act Release No. 34–53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (''Release No. 34–53128'') (order granting application of NASDAQ Stock Market LLC (''NASDAQ'') for registration as a national securities exchange). As noted below, members of the NASDAQ ROC must satisfy both NASDAQ's public director and independent director requirements.

[5] *See* Securities Exchange Act Release No. 34–58375 (August 18, 2008), 73 FR 49498, 49502 (August 21, 2008) (File No. 10–182) (''Release No. 34–58375'') (approving BATS' application seeking registration as a national securities exchange).

[6] Article III, section 3.02(a) of the Exchange's Bylaws requires that at least 50% of the Exchange's directors be public directors, defined as ''persons from the public and [who] will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.'' The Exchange believes that the Bylaw requirements for ''public directors'' establish the Exchange's criteria for director independence, and therefore serve the same purpose as the NYSE and NYSE MKT Independence Policies. *See* Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE- 2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07) (approving NYSE's and NYSE MKT's director independence policy). *See also* Release No. 34–53128, 71 FR at 3553 (the Commission has recognized that ''public directors can provide unique, unbiased perspectives'' that can ''enhance'' a board's ability ''to address issues in a non-discriminatory fashion and foster the integrity'' of the Exchange).

[7] *See e.g.,* NASDAQ By-laws, Article III, section 5(c) (''NASDAQ Bylaws'') (specifying a ROC comprising three directors who must satisfy both NASDAQ's public director and independent director requirements); Third Amended and Restated Bylaws of BATS Exchange, Inc. (''BATS''), Article V, section 6(c) (''BATS Bylaws'') (specifying a ROC comprising three non-industry (*i.e.,* public) directors); and Chicago Board Options Exchange, Incorporated (''CBOE'') Bylaws, Article IV, section 4.5 (specifying a ROC of at least three directors all of whom shall be ''non-industry'' directors).

[8] The Exchange proposes to amend Rule 3.1(a) to permit the appointment of NYSE Regulation directors to the ROC by amending the rule to provide that board committees ''may'' consist ''partly or entirely'' of Exchange directors instead of the current requirement that committees consist of ''one or more'' Exchange directors.

[9] *See, e.g.,* Release No. 34–53128, 71 FR at 3555 (NASDAQ); Release No. 34–58375, 73 FR at 49502 (BATS); Securities Exchange Act Release No. 34–61152 (December 10, 2009), 74 FR 66699, 66704–705 (December 16, 2009) (File No. 10–191) (approving application of C2 Options Exchange, Incorporated, seeking registration as a national securities exchange); and Securities Exchange Act Release No. 34–61698 (March 10 [sic], 2010), 75 FR 13151, 13161 (March 12 [sic], 2010) (''Release No. 34–61698'') (approving application of EDGX Exchange, Inc. and EDGA Exchange, Inc., seeking registration as a national securities exchange).

[10] *See e.g.,* BATS Bylaws, Article V, section 2(a) (''the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board.''); Second Amended and Restated By-laws of National Stock Exchange, Inc., Article V, section 5.2 (same).

[11] *See e.g.,* NASDAQ Bylaws, Article III, Section 2(b).

[12] These three core responsibilities of the proposed ROC would be substantially similar to those of other SROs' ROCs. *See, e.g.,* NASDAQ Bylaws, Article III, section 5; Release No. 34–58375, 73 FR at 49502 (BATS); Release No. 34–61698, 75 FR at 13161 (EDGX Exchange, Inc. and EDGA Exchange, Inc.); and Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article IV, section 4.5(c).

[13] The obligations of the proposed ROC would be substantially similar to those of other SROs' ROCs. *See, e.g.,* NASDAQ Bylaws, Article III, section 5; Bylaws of NASDAQ OMX PHLX LLC, Article V, Section 5–2; Third Amended and Restated Bylaws of BATS-Exchange, Inc., Article V, Section 6(c).

providing that vacancies in the membership of any committee would be filled by the Exchange Board, which is consistent with proposed Rule 3.3 and the same as other SROs.[14]

As stated above, the Exchange proposes that members of the ROC could be either public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements, thereby ensuring that the ROC would be comprised of independent members.[15] The proposed eligibility of qualifying directors of the NYSE Regulation board for the ROC would allow individuals to be members of the ROC who have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs.

The Exchange believes that the proposed rule change creating an independent board committee to oversee the adequacy and effectiveness of the performance of its self-regulatory responsibilities is consistent with previously approved rule changes for other self-regulatory organizations and would enable the Exchange to harmonize its corporate governance with that of its industry peers.[16] Moreover, the Exchange believes that the proposed adoption of a ROC would ensure the continued independence of the regulatory process.[17] The fundamental hallmarks of regulatory independence—determinations regarding the Exchange's regulatory plan, programs, budget and staffing made by individuals independent of Exchange management and a CRO having general supervision of the regulatory operations of the Exchange and reporting to a ROC—are integral to the proposal.[18]

[14] *See* Second Amended Limited Liability Company Agreement of the NASDAQ Stock Market LLC, Section 9(g).

[15] *See* note 7 and accompanying text *supra.*

[16] *See* NASDAQ Bylaws, Article III, section 5(c); BATS Bylaws, Article V, section 6(c).

[17] *See, e.g.,* Securities Exchange Act Release No. 34–48946 (December 17, 2003), 68 FR 74678, 74687 (August 21, 2008 [sic]) (SR–NYSE–2003–34).

[18] *See, e.g.,* Release No. 34–53128, 71 FR at 3555. Prior to 2010, the Exchange's rules and Bylaws provided for a ROC composed entirely of public directors that was responsible for ensuring (i) the independence of Exchange regulation; (ii) adequate resources for the Exchange to properly fulfill its self-regulatory obligations; and (iii) that Exchange management fully supported the execution of the regulatory process. *See* Securities Exchange Act Release No. 34–62304 (June 16, 2010), 75 FR 36136, 36138 (May 6, 2010) (SR–NYSEArca–2010–31). In 2010, in order to align corporate practices with its affiliates NYSE and NYSE MKT, the Exchange transferred oversight of the Exchange's regulatory activities to the board of directors of NYSE Regulation and eliminated the ROC. *See id.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act [19] in general, and with section 6(b)(1) [20] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed change would create an independent board committee to oversee the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities. The proposed ROC, similar in composition and functions to the approved ROCs of other SROs, would be designed to oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.

As noted, the Exchange proposes that members of the ROC could be either public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements, thereby ensuring that the ROC would be comprised of independent members. The Exchange believes that proposing to allow directors of NYSE Regulation who satisfy the public director requirements to be eligible for the ROC would provide the choice to include these individuals who have direct experience in overseeing the adequacy and effectiveness of the Exchange's and its affiliates' regulatory programs. Accordingly, the Exchange believes that the proposed amendment would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act. The Exchange therefore believes that approval of the proposed amendment to the Bylaws is consistent with section 6(b)(1).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(1).

The Exchange also believes that this filing furthers the objectives of section 6(b)(5) of the Exchange Act [21] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As discussed above, the Exchange believes that the proposed creation of a ROC composed of public directors of the Exchange Board or directors of NYSE Regulation who satisfy the public director requirements would align the Exchange's corporate governance practices with other SROs that have adopted a ROC to monitor the adequacy and effectiveness of the regulatory program, assess regulatory performance, and assist the Board in reviewing the regulatory plan and the overall effectiveness of the regulatory function. Moreover, the Exchange believes that the proposed ROC structure would also sufficiently ''insulate'' the regulatory functions from the Exchange's ''market and other commercial interests'' in order for the Exchange to carry out its regulatory obligations.[22] The Exchange believes that the proposed rule change is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of section 6(b)(5) of the Exchange Act. The independent oversight of the Exchange's regulatory functions by the proposed ROC is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange's Board.

[21] 15 U.S.C. 78f(b)(5).

[22] Release No. 34–53128, 71 FR at 3556.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–29 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–29, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10311 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74821; File No. SR–NASDAQ–2015–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees, Dues and Other Charges

April 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Chapter VI, Section 16, entitled ''Fees and Charges,'' which rule is applicable to NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter VI, Section 16, entitled ''Fees and Charges.'' Today, the Exchange's Rule at Chapter VI, Section 16 discusses participation Fees and notes that the Board in its discretion may fix participations fees payable by Options Participants on a quarterly basis.[3] Also, Options Participants shall pay a fee for each transaction they execute on NOM, as may be determined by the Board in its discretion. The Board may prescribe different or no fees for different types of transactions conducted on NOM.[4] The Board may fix and impose other fees, assessments or charges to be paid by Options Participants or by classes of Options Participants with respect to applications, registrations, approvals, use of NOM and Trading System facilities or other services or privileges granted.[5] Finally, an Options Participant that does not pay any fees, assessments, charges, fines or other amounts due to NOM within thirty (30) days after they have become due and payable shall be reported to the Board or its delegate which may, after giving reasonable notice to the Options Participant of such arrearages, suspend the Options Participant until payment is made or terminate the Options Participant's

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Chapter VI, Section 16(a).

[4] *See* Chapter VI, Section 16(b).

[5] *See* Chapter VI, Section 16(c).

participation on NOM. An associated person of an Options Participant who fails to pay any fine or other amounts due to NOM within thirty (30) days after such amount has become due and payable and after reasonable notice of such arrearages, may be suspended from association with an Options Participant until payment is made.[6]

The Exchange is proposing to amend the title of Chapter VI, Section 16 to ''Fees, Dues and Other Charges'' and adopt the rule text of current NASDAQ OMX PHLX LLC (''Phlx'') Rule 52 into current Chapter VI, Section 16. The Exchange desires to harmonize Chapter VI, Section 16 with Phlx Rule 52.

The new rule text would continue to permit the Board of Directors to have the power to fix fees. The proposed new rule would permit the Board: (i) to establish, assess and levy such fees, dues and other charges (including, without limitation, any extraordinary assessments) upon members and any other persons using the facilities or services of the Exchange, and upon applicants for and persons being admitted, registered, qualified and/or initiated to any such status, in each case as the Board of Directors may from time to time establish by resolution or in the Rules of the Exchange (which shall be deemed to include any schedule of fees, dues, other charges and penalties as may be in effect from time to time), (ii) to establish rebates, credits and discounts with respect to any of the foregoing, (iii) to establish programs whereby the Exchange shares or permits any person to participate in any identified source of revenues (less any expenses or other charges as the Exchange shall determine) of the Exchange, (iv) to provide for the direct reimbursement to the Exchange of any cost, expense or category thereof, and (v) except insofar as otherwise specified or provided for in the By-Laws, to establish and assess penalties for failure to pay any fees, dues or charges owed to the Exchange, including, without limitation, termination of membership (which membership may be reissued) and forfeiture of all rights as a member. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to the assessment of fees, dues, other charges and penalties authorized in accordance with this Section.[7] The Exchange believes that the proposed rule text includes a more exhaustive list of powers that the Board, or its delegate, may exercise with respect to fees.

The Board of Directors may also, from time to time, fix and impose charges upon members, measured by their respective net commissions on transactions effected on the Exchange. Such charges shall be payable at such times and shall be collected in such manner as may be determined by the Board of Directors.[8] The Exchange believes that this rule text is more expansive than the rule text in current rule Chapter VI, Section 16 and provides the board with additional flexibility in imposing fees. Participants shall abide by the provisions of the Exchange's By-Laws and the Rules, which shall include, without limitation, the obligation to pay all applicable fees, dues and other charges imposed thereon by the By-Laws or the Rules of the Exchange.[9] Participants today are obligated to abide by the provisions of the Exchange's By-Laws and the Rules and pay all applicable fees, dues and other charges imposed thereon by the By-Laws or the Rules of the Exchange. This provision does not impose any new obligations on Participants.

Finally, the Board of Directors or their designee may suspend or terminate, after due notice, any permit or rights of any Participant or employee thereof using facilities or services of the Exchange, or enjoying any of the privileges therein, who shall not pay dues, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions in accordance with the Rules of the Exchange.[10] Today, the Exchange has the power to suspend Participants as noted in current rule Chapter VI, Section 16. The Exchange believes that this new provision provides the Board with greater flexibility in both suspending and now terminating Participants for failure to pay fees. The Exchange's Rules today provide a process for the suspension, cancellation and bar of its members.[11]

The Exchange is not proposing to adopt the provisions of Phlx Rule 52(e) as those provisions apply today to NOM Participants.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that these proposed rule changes will harmonize the NOM's Rules related to fees with that of Phlx.

The Exchange's process for billing and collecting fees on NOM today is the same process which exists on Phlx. The Exchange therefore desires to adopt Rule 52 to better describe the Board's powers and the obligations of Participants with respect to fees. The Exchange believes that this new provision provides the Board with greater flexibility in both suspending and now terminating Participants for failure to pay fees. The Exchange's By-Laws at Article IX, Section 4 provide the Board with authority to fix and levy the amount of fees assessed to members and Rule 9553 contemplates the ramifications and process by which members are notified and sanctioned for a failure to pay such fees.

The adoption of an Exchange Rule similar to Phlx Rule 52 will align the NOM Rules with that of Phlx, with respect to fees, and reflect the current process which exists at both exchanges. The new text adds clarity to the NOM Rules and better reflects the current process. The Exchange believes that the adoption of the new rule text will provide Participants with clear guidelines for the payment of fees and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule text does not impose an undue burden on competition, rather it seeks to clarify the power of the Exchange's Board and the manner in which the Exchange manages the assessment of fees. NOM Participants will all be subject to the same obligations as specified in the proposed rule with respect to fees.

[6] *See* Chapter VI, Section 16(d).

[7] *See* proposed new Chapter VI, Section 16(a).

[8] *See* proposed new Chapter VI, Section 16(b).

[9] *See* proposed new Chapter VI, Section 16(c).

[10] *See* proposed new Chapter VI, Section 16(d).

[11] *See* NASDAQ Rule 9553, entitled ''Failure to Pay Nasdaq Dues, Fees and Other Charges,'' specifies the process for suspension, cancellation and bar applicable to Nasdaq members.

[12] *See* NASDAQ Rule 8320, entitled ''Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay.''

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2015–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2015–039.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2015–039* and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10281 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15g–6, SEC File No. 270–349, OMB Control No. 3235–0395.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15g–6—Account Statements for Penny Stock Customers—(17 CFR 240.15g–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq*.).

Rule 15g–6 requires brokers and dealers that sell penny stocks to provide their customers monthly account statements containing information with regard to the penny stocks held in customer accounts. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 221 broker-dealers will spend an average of 78 hours annually to comply with this rule. Thus, the total compliance burden is approximately 17,238 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: April 28, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–10284 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74823; File No. SR–NASDAQ–2015–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Collection of Exchange Fees

April 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to amend Exchange Rule 7007, which is currently reserved, and entitle it ''Collection of Exchange Fees and Other Claims'' and require each Nasdaq member, and all applicants for registration as such, to provide a clearing account number for an account at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 7007 to require NASDAQ members, and all applicants for registration as such, to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to certain 7000 series rules[3] and the 8000[4] series rules which are due and owing to NASDAQ. The Exchange would entitle Rule 7007 ''Collection of Exchange Fees and Other Claims.''

Currently, the Exchange requires all Options Participants to provide such an NSCC account number.[5] The Exchange believes that the proposed debiting process for NASDAQ members that conduct an equities business would create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.[6] Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange by NASDAQ members conducting an equities business, as it does today for Options Participants on the NASDAQ Options Market LLC (''NOM'').[7] Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would prevent NASDAQ member accounts from becoming overdue.

The Exchange proposes to require NASDAQ equity members and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit any undisputed or final fees, fines, charges and/or monetary sanctions or other monies due and owing to the Exchange or other charges related to the 7000 series rules, as specified below, and the 8000 series rules. Specifically, the following 7000 series Rules will be subject to proposed Rule 7007: 7001 (Membership Fees), 7014 (Market Quality Incentive Programs: Investor Support Program), 7015 (Access Services), 7016 (Nasdaq Risk Management), 7018 (Nasdaq Market Center Order Execution and Routing), 7021 (NasdaqTrader.com Trading and Compliance Data Package Fee), 7024 (Clearly Erroneous Module), 7027 (Aggregation of Activity of Affiliated Members), 7029 (Installation, Removal or Relocation), 7030 (Other Services), 7034 (Co-Location Services), 7038 (Step-Outs and Sales Fees Transfers), 7041 (Nasdaq Regulation Reconnaissance Service), 7042 (Non-Tape Riskless Submissions), 7043 (Inclusion of Transaction Fees in Clearing Reports Submitted to ACT), 7049 (Nasdaq InterACT), 7051 (Direct Connectivity to Nasdaq), 7055 (Short Sale Monitor), 7058 (QView), 7060 (Equity Trade Journal for Clearing Firms) and 7061 (Limit Locator).

The Exchange would send a monthly invoice[8] to each NASDAQ equity member on approximately the 3th—10th business day of the following month.[9] The Exchange would also send a file to NSCC each month on approximately the 23rd of the following month to initiate the debit of the appropriate amount stated on the NASDAQ member's invoice for the prior month. Because the NASDAQ member would receive an invoice well before any monies are debited (normally within two weeks), the NASDAQ member would have adequate time to contact the staff with any questions concerning its invoice. If a NASDAQ member disagrees with the invoice, the Exchange would not commence the debit until the dispute is resolved. Specifically, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the

[3] The 7000 series rules in the NASDAQ Rulebook list charges for membership, services and equipment. Only the Rules which require payment to the Exchange would be subject to direct debit. By way of example, Rule 7003, Registration and Processing Fees, fees are collected by FINRA.

[4] The 8000 series rules in the NASDAQ Rulebook list sanctions associated with disciplinary actions. Any disciplinary fines or sanctions collected pursuant to the 8000 series shall be subject to direct debit to the extent described within this rule change. *See also* note 6 for exceptions to debits.

[5] *See* Chapter XV, Section 1 in the NASDAQ Rules.

[6] The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the NASDAQ member.

[7] *See* NOM Rules at Chapter XV, Section 1. NOM Participants are subject to the same process for direct debit as specified herein.

[8] The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the NASDAQ member's clearing firm which will indicate the amounts to be debited from each member. If a NASDAQ member is ''self-clearing'', no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

[9] NASDAQ members may receive invoices either electronically, by mail or by both methods.

month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing members account. In the instance where the NASDAQ member clears through an Exchange clearing member, the estimated transaction fees owed to the Exchange are typically debited by the clearing member on a daily basis in order to ensure adequate funds have been escrowed. The Exchange would debit any monies owed including undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owed to the Exchange.[10] The Exchange believes that the debit process would eliminate the risk of unpaid invoices because of the large amounts of capital held at NSCC by NASDAQ equity members.

The Exchange proposes this rule change become operative on July 1, 2015. On August 24, 2015, the Exchange will debit July 2015 billing pursuant to the process described in this rule change.[11] The Exchange will notify NASDAQ equity members of this rule change in an Equity Trader Alert to provide its members ample time to provide the Exchange with the information necessary for the direct debit and prepare for the change to the collection process. NASDAQ members' primary NSCC account number will be utilized unless the NASDAQ member contacts the Exchange prior to July 1, 2015 with an alternate NSCC account number.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by providing NASDAQ equity members with an efficient process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies dues and owing to the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is reasonable because it would ease the NASDAQ equity member's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all NASDAQ members who owe monies to the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is equitable and not unfairly discriminatory because it will apply to all NASDAQ members in a uniform manner. Today, the debit process is applied to all NOM Participants.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the proposed debit process would apply uniformly to all NASDAQ members as it does today with all Options Participants.

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange for NASDAQ members conducting an equities business, as it does today for NOM Participants. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would prevent NASDAQ member accounts from becoming overdue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[10] This includes, among other things, fines and sanctions which result from disciplinary proceedings or actions taken pursuant to the 8000 series of NASDAQ Rules. With respect to disciplinary proceedings, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the NASDAQ member's invoice prior to the actual NSCC debit.

[11] The initial debit will include all outstanding fees through August 2015.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 7.

[15] 15 U.S.C. 78s(b)(3)(a)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–046, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10283 Filed 5–1–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0030; Notice 1]

Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Continental Tire the Americas, LLC, (CTA), has determined that certain Continental Tire brand TKC80 motorcycle replacement tires do not fully comply with paragraph S6.5(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Radial Tires for motor vehicles with a GVWR of more than 4,536 Kilograms (10,000 pounds) and Motorcycles.* CTA has filed an appropriate report dated February 18, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is June 3, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. CTA's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CTA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of CTA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Affected are approximately 1,062 Continental TKC80 size 120/70–19 M/C 60Q diagonal (bias) motorcycle replacement tires manufactured between April 8, 2012 and January 31, 2015.

III. Noncompliance

CTA explains that the noncompliance is that the tire size designation marking on the sidewalls of the subject tires does not contain the correct construction code designator symbol from The Tire and Rim Association yearbook. Therefore, the tires do not fully comply with paragraph S6.5(c) of FMVSS No. 119 because the tire size designation is not as listed in the documents and publications designated in S5.1. Specifically, the tires were marked with the construction code designator ''B'' indicating bias-belted construction and should have been marked with the designator ''-'' indicating diagonal (bias) construction.

IV. Rule Text

Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 Tire Markings. Except as specified in paragraphs, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. . .

(c) The tire size designation as listed in the documents and publications designated in S5.1.

V. Summary of CTA's Analyses

CTA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) CTA notes that the only improper marking on the sidewall of the subject tires is the use of the letter character ''B'' in the

[17] 17 CFR 200.30–3(a)(12).

tire size designation instead of a hyphen character ''-,'' and that from its experience it believes that most motorcycle tire consumers do not understand the differences in tire construction and therefore do not base tire purchases on the tire construction type.

(B) CTA stated that the subject tires were built as designed and that the performance requirements and testing requirements specified in FMVSS No. 119 are exactly the same for both bias-belted and diagonal (bias) tires.

(C) CTA believes that the subject noncompliance has no impact on the safety of vehicles on which the subject tires are mounted and that the subject tires meet or exceed all the performance requirement of FMVSS No. 119.

(D) CTA also stated that it is not aware of any crashes, injuries, customer complaints, or field reports associated with the subject noncompliance.

CTA additionally informed NHTSA that the molds at the manufacturing plant have been corrected so that no additional tires will be manufactured or sold with the noncompliance.

In summation, CTA believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt CTA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–10263 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0107, Notice 2]

Decision That Nonconforming Model Year 2010 European Market Ferrari California Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration that certain Model Year (MY) 2010 Ferrari California passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the MY 2010 Ferrari California PC), and they are capable of being readily altered to conform to the standards.

DATES: This decision became effective on April 28, 2015.

ADDRESSES: For further information contact George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland (''JK'') (Registered Importer #RI–90–006), petitioned NHTSA to decide whether certain MY 2010 Ferrari California PCs are eligible for importation into the United States. NHTSA published a notice of the petition on March 21, 2014 (79 FR 15800) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

Comments

On April 21, 2014, NHTSA received comments from Ferrari North America (FNA), the vehicle's original manufacturer. In its comments, Ferrari stated that while it agreed that the U.S. and the non-U.S. versions of the vehicle are ''substantially similar'' within the meaning of section 30141(a)(1)(A)(i), it strongly disputed JK's assertions that the non-U.S. version could be readily altered to comply with all applicable FMVSS. FNA elaborated by presenting detailed reasons for its assertions with respect to specific FMVSS.

On May 21, 2014, NHTSA forwarded FNA's comments to JK and asked that it respond by June, 4, 2014. By letter dated June 10, 2014, JK requested a 45 day extension in order to gather engineering data to adequately address the concerns raised by FNA. NHTSA approved JK's request for this extension and JK responded on August 15, 2014.

A summary of FNA's comments, JK's responses, and the conclusions that NHTSA has reached with regard to the issues raised by the parties is set forth below.

Review of Comments and Conclusions

NHTSA has reviewed the petition, FNA's comments and JK's responses to those comments, and has concluded that the vehicles covered by the petition are capable of being readily altered to comply with all applicable FMVSS. However, NHTSA has also decided that an RI who imports or modifies one of these vehicles must include in the statement of conformity and associated documents (referred to as a ''conformity package'') it submits to NHTSA under 49 CFR 592.6(d) specific proof to confirm that the vehicle was manufactured to conform to, or was successfully altered to conform to, each of the following standards:

FMVSS No. 101, Controls and displays; FNA commented that the Electronic Control Unit (''ECU'') for the instrument cluster would have to be reflashed with a ''Proxy'' file from the Ferrari factory to ensure that all of the other ECUs on the Control Area Network (''CAN'') are aware of the new ECU and are communicating properly. FNA additionally commented that the necessary reprogramming to achieve conformity to the standard can only be completed with proprietary hardware and software which is not available to RI's and can only be obtained from Ferrari and/or FNA.

JK responded that they have the necessary equipment and can obtain the files from a donor vehicle.

NHTSA has decided that a description of how the programming changes were completed and how compliance with the standard was verified must be included in each conformity package. Photographs, printouts, and/or images of the installation computer's monitor (''screenshots''), as practicable, must also be submitted as proof that the reprogramming was carried out successfully.

FMVSS No. 108, Lamps, reflective devices, and associated equipment; FNA commented that the reprogramming identified by JK would necessitate reflashing [the control system] with a ''Proxy'' file from the Ferrari Factory in order to assure that all aspects of the lighting system perform in accordance with this standard.

JK responded that they have the necessary equipment and can obtain the files from a donor vehicle.

NHTSA has decided that a description of how the programming changes were accomplished and how compliance with FMVSS No. 108 is verified must accompany each conformity package. Photographs, printouts, and/or screenshots, as practicable, must also be submitted as proof that the reprogramming was carried out successfully.

FMVSS No. 111, Rearview mirrors; FNA commented that in addition to the modifications noted in the petition, the driver's outside rearview mirror would need to be replaced.

JK responded that no comment is necessary.

NHTSA has decided that proof, including photographs, must be submitted with each conformity package to show that the vehicle is equipped with a driver's side rear view mirror that allows the vehicle to meet the applicable requirements of FMVSS No. 111.

FMVSS No. 114 Theft protection and rollaway prevention; As was the case with FMVSS Nos. 101 and 108, FNA contended that reprogramming could only be completed with proprietary hardware and software which is not available to RI's and can only be obtained from Ferrari and/or FNA.

JK responded that they have the necessary equipment and can obtain the files from a donor vehicle.

NHTSA has decided that a description of how the programming changes were completed and how compliance was verified must accompany each conformity package. Additionally, photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming was carried out successfully.

FMVSS No. 118, Power-Operated window, Partition, and Roof Panel Systems; FNA commented that the reprogramming identified by JK is not necessary for the vehicles to conform to the standard.

NHTSA has decided that a description of how the vehicle's conformity was determined must accompany each conformity package. Descriptions of any modifications necessary to achieve conformity must accompany each conformity package.

FMVSS No. 138, Tire pressure monitoring systems; In its petition JK claims that the subject non-U.S. certified vehicles conform to FMVSS No. 138 as originally manufactured. FNA commented that tire pressure monitoring systems (TPMS) are not standard equipment on all European Ferrari California vehicles and that substantial work would be required to bring vehicles into compliance with the standard. FNA further asserted that because of the extent and complexity of the required changes, vehicles not originally equipped with TPMS cannot be ''readily altered'' to comply with the standard.

JK responded that most non-U.S. certified MY 2010 Ferrari California PCs are equipped with TPMS, but that due to varying regulations around the world, some vehicles may be missing the system. JK further stated that all vehicles entering the U.S. would have to be inspected for compliance, both with regard to the material components of the system and to the programming of the system. JK also states that the vehicle they inspected had a system identical to that found in the U.S.-certified vehicle.

NHTSA has decided that a description of how any applicable modifications and/or programming changes were completed and how compliance was verified must accompany each conformity package. Additionally, photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming and/or modifications were carried out successfully.

FMVSS No. 208, Occupant Protection; FNA commented that JK did not identify all components that need to be replaced in order to bring the airbag system into compliance. FNA specifically notes that the European versions of the subject of vehicles are not equipped with a ''PASS AIR BAG OFF'' telltale, which is required for compliance. Additionally, FNA stated that JK did not identify certain portions of the instrument panel that differ from those on the U.S.-certified version of the vehicle and that would have to be changed to assure compliance with the unbelted crash requirements of the standard.

JK responded that all vehicles processed under this petition must be inspected for compliance with all requirements of FMVSS No. 208. JK commented that the modifications for this standard concern the airbags, seats, seatbelts, wiring harnesses, air bag light, passenger air bag off light, instrument cluster, child seat tethers, and other hardware. JK also responded that the entire system would need to be programmed with the U.S. advanced air bag programs and that they will run all system checks with their ''in house'' weighted dummies in order to confirm compliance.

NHTSA has decided that each conformity package must include a detailed description of the occupant protection system in place on the vehicle at the time it was delivered to the RI, and a similarly detailed description of the occupant protection system in place after the vehicle is altered, including photographs of all required labeling. The description must also include; assembly diagrams and associated part numbers for all components that were removed from and installed on the vehicle, a description of how the programming changes were completed, and a description of how compliance was verified. Additionally, photographs (*e.g.,* screenshots) or report printouts, as practicable, must be submitted as proof that the reprogramming was carried out successfully. Proof must also be furnished that all portions of the instrument panel in the vehicle, as altered, are identical to the U.S. version instrument panel, or proof in the form of dynamic test results that, as altered, the vehicle conforms to the unbelted occupant requirements of FMVSS No. 208.

FMVSS No. 209, Seat belt assemblies; FNA commented that as pointed out by JK in their petition, some European market vehicles are equipped with four-point seat belt assemblies that do not comply with this standard. FNA contends that the belts could not simply be replaced by a registered importer, due to the absence of an anchorage on the B-pillar.

JK responded that all vehicles processed under this petition would need to be inspected for compliance and that all parts of the system are available.

NHTSA has decided that each conformity package must include photographic evidence that conforming safety belts have been installed in the vehicle. Safety belt anchorages are addressed in the following FMVSS No. 210 discussion.

FMVSS No. 210, Seat belt assembly anchorages; In its petition JK claims that the subject non-U.S. certified vehicles conform to FMVSS No. 210 as originally manufactured. FNA commented that European-market vehicles that were equipped with optional four point harnesses lack b-pillar anchorages which are necessary for the installation of compliant three point harnesses. FNA expresses concern about the ability of an RI to install this anchorage and ensure that it meets the performance requirements of the standard without Ferrari's templates and tools, which are only used during production.

JK responded that any vehicle found to be equipped with the optional belts and lacking the mentioned anchorage would have to be modified to meet this standard. JK further states that they will draw a template from the U.S. donor vehicle and that as a result all parts and engineering of the anchorage would then be identical to the Ferrari mounting point. JK asserts that less than one percent of production is equipped with the optional belts.

NHTSA has decided that conformity packages for vehicles that require modification must include a detailed description of the alterations made to achieve conformity with the standard. The description must include sufficient information to validate how the alterations allowed the vehicle to meet the requirements of the standard. This information must include photographic evidence that the modification was carried out, as well as testing and/or engineering analysis reports documenting how the RI has verified that the alterations will allow the vehicle to meet all applicable requirements of the standard.

FMVSS No. 301 Fuel system integrity; FNA stated that the modifications to the fuel system that JK identified in its petition, while necessary to comply with emissions requirements, have no bearing on compliance with FMVSS No. 301.

JK responded that the rollover valves incorporated in the U.S. market system are an integral part of the fuel system integrity of the vehicle and necessary for compliance.

NHTSA has decided that the fuel system modifications are necessary to bring vehicles into compliance with the standard. Additionally, NHTSA has decided that each conformity package must include a detailed description of all modifications made to achieve conformity with the standard. This description must include part numbers for each part replaced and be supported with photographic evidence of the modifications made to achieve conformity.

FMVSS No. 401 Interior trunk release; FNA expressed agreement that the modifications noted in the petition are necessary to conform the vehicle. The company noted, however, that the reprogramming could only be completed with proprietary hardware and software which is not available to RI's and can only be obtained from Ferrari and/or FNA.

JK responded that it has the necessary programs from its U.S. model vehicle.

NHTSA has decided that each conformity package must include a description of how the programming changes were completed and how compliance was verified. Additionally, photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming was carried out.

49 CFR part 581, Bumper Standard; FNA commented that in addition to the modifications noted by JK in its petition, additional bumper reinforcements would have to be installed in both the front and the rear of the vehicle.

JK responded that no comment was necessary.

NHTSA has decided that each conformity package must include a detailed description of all modifications made to achieve conformity with the standard, including necessary modifications to the bumper reinforcements. This description must include part numbers for each part replaced and be supported with photographic evidence of the modifications made to achieve conformity.

In addition to the information specified above, each conformity package must include evidence showing how the RI verified that the changes it made in loading or reprograming vehicle software to achieve conformity with each separate FMVSS, did not also cause the vehicle to fall out of compliance with any other applicable FMVSS.

Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that model year 2010 European model Ferrari California passenger cars that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to model year 2010 Ferrari California passenger cars manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–570 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–10264 Filed 5–1–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 308X)]

Union Pacific Railroad Company—Discontinuance of Service Exemption—in Cochise County, AZ.

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1152 subpart F–*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 48.03-mile portion of a rail line known as the Curtiss Branch, from milepost 1040.15 at Curtiss, to milepost 1084.0 at Naco, in Cochise County, Ariz. (the Line).[1] The Line traverses United States Postal Service Zip Codes 85602, 85630,

[1] UP states there is a milepost overlap equation (milepost 1050.57 = milepost 1046.39). The Line segment from Curtiss at milepost 1040.15 to Fairbank at milepost 1050.57 is 10.42 miles, and the Line segment from Fairbank at milepost 1046.39 to Naco at milepost 1084.0 is 37.61 miles, a total distance of 48.03 miles.

85616, 85638, 85635, 85615, 85603, and 85620.

The verified notice states that the Line's previous owner sought and received abandonment authority for the Line [2] and salvaged the track structure on the Line, but did not consummate the abandonment and instead sold the Line to UP.[3] UP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on June 3, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2),[4] must be filed by May 14, 2015.[5] Petitions to reopen must be filed by May 26, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: April 29, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–10349 Filed 5–1–15; 8:45 am]

BILLING CODE 4915–01–P

[2] *San Pedro R.R. Operating Co.—Aban. Exemption—in Cochise Cnty., Ariz.*, AB 1081X (STB served Feb. 3, 2006).

[3] *Union Pac. R.R.—Acquis. & Operation Exemption—San Pedro R.R. Operating Co.*, FD 35666 (STB served Sept. 7, 2012).

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[5] Because this is discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Rev. Proc. 2008–60, Election Involving the Repeal of the Bonding Requirement.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

■ *Title:* Election Involving the Repeal of the Bonding Requirement under § 42(j)(6).

OMB Number: 1545–2120.

Revenue Procedure Number: 2008–60.

Abstract: This revenue procedure affects taxpayers who are maintaining a surety bond or a Treasury Direct Account (TDA) to satisfy the low-income housing tax credit recapture exception in § 42(j)(6) of the Internal Revenue Code (the Code), as in effect on or before July 30, 2008. This revenue procedure provides the procedures for taxpayers to follow when making the election under section 3004(i)(2)(B)(ii) of the Housing Assistance Tax Act of 2008 (Pub. L. 110–289) (the Act) to no longer maintain a surety bond or a TDA to avoid recapture.

Current Actions: There is no change to this Revenue Procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 7810.

Estimated Time Per Respondent: 1 hours.

Estimated Total Annual Burden Hours: 7810.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through

The use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2015.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–10304 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13997

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13997, Validating Your TIN and Reasonable Cause.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Validating Your TIN and Reasonable Cause.

OMB Number: 1545–2144.

Form Number: Form 13997.

Abstract: Under the provisions of Internal Revenue Code section (IRC Sec.) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC sec. 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form will be an attachment to Letter 4318 that is being drafted to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 23, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–10321 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Sara Covington, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

■ *Title:* Guidance on Reporting Interest Paid to Nonresident Aliens.

OMB Number: 1545–1725.

Regulation Project Number: TD 9584.

Abstract: This document contains final regulations that provide guidance on the reporting requirements for interest on deposits maintained at the U. S. office of certain financial institutions and paid to nonresident alien individuals. These proposed regulations affect persons making payments of interest with respect to such a deposit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated total annual reporting burden: 500 hours.

Estimated average annual burden hours per respondent: 15 minutes.

Estimated number of respondents: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 23, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–10320 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to substantiation and reporting requirements for cash and noncash charitable contribution deductions.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions.

OMB Number: 1545–1953.

Regulation Project Number: REG–140029–07 (NPRM).

Abstract: These proposed regulations provide guidance concerning substantiation and reporting requirements for cash and noncash charitable contributions under section 170 of the Internal Revenue Code (Code). The regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. The regulations provide guidance to individuals, partnerships, and corporations that make charitable contributions, and will affect any donor claiming a deduction for a charitable contribution after the date these regulations are published as final regulations in the **Federal Register**.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business, other for-profit organizations.

Estimated Number of Respondents: 201,920.

Estimated Total Annual Burden Hours: 226,419.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–10323 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, Bad Debt Reserves of Banks.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bad Debt Reserves of Banks.

OMB Number: 1545–1290.

Regulation Project Number: TD 8513.

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts.

Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting: or (3) to revoke any elections previously made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2015.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–10322 Filed 5–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Publication of Wait-Times for the Department for the Veterans Choice Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In keeping with its commitment to improve transparency, the Department of Veterans Affairs' (VA) publishes wait-times for the scheduling of appointments in each VA facility for primary care, specialty care, and mental health services every two weeks. VA also publishes a **Federal Register** Notice every 90 days with the address of the Web site where this wait-time data can be accessed. This Notice announces the availability of the data on that Web site.

ADDRESSES: The wait-time data for all Veterans Health Administration (VHA) medical centers and clinics is available on the following Web site: *http://www.va.gov/health/access-audit.asp.*

FOR FURTHER INFORMATION CONTACT: Ms. Crystal K. Wilson, Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420 Telephone: (202) 461–5624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 206 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146, ''the Act'') directed the Department of Veterans Affairs (VA), not later than 90 days after the date of the enactment of the Act, to publish in the **Federal Register**, and on a publicly-accessible Internet Web site of each VA Medical Center, the wait-times for the scheduling of an appointment in each VA facility for the receipt of primary care, specialty care, and hospital care and medical services based on the general severity of the condition of the veteran. Whenever the wait-times for the scheduling of such an appointment change, the Act also requires the Secretary to publish the revised wait-times on a publicly-accessible Internet Web site of each VA Medical Center not later than 30 days after such change and in the **Federal Register** not later than 90 days after such change.

VA publishes wait-times for the scheduling of appointments in each VA facility for primary care, specialty care, and mental health services every two weeks. VA also publishes a **Federal Register** Notice every 90 days to notify the public of the availability of this wait-time data. This wait-time data uses the Veteran's preferred date or the clinically appropriate date for scheduling an appointment.

This Notice announces the publication of the most recent wait-times of VHA for primary care and specialty care as required the Act, as well as mental health care wait-times. The wait-time data report, which also includes data at the Community-Based Outpatient Clinic level for all VA facilities, can be found using the following link: *http://www.va.gov/health/access-audit.asp.*

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on April 30, 2015, for publication.

Dated: April 30, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–10460 Filed 5–1–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on May 19–20, 2015, in Room 630 at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on May 19 and at 12 noon on May 20. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetic programs designed to provide state-of-the-art prosthetic devices and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On May 19, the Committee will receive briefings on Chiropractic Care, Telemedicine, Service Dogs, Audiology and Speech Pathology, and Rehabilitation Research and Development. On May 20, the Committee will receive briefings on Prosthetic and Sensory Aids, and Blind Rehabilitation.

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Larry N. Long, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4RR), VA, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *lonlar@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Mr. Long at (202) 461–7354.

Dated: April 29, 2015.

Rebecca Schiller,

Committee Management Officer.

[FR Doc. 2015–10330 Filed 5–1–15; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926
Confined Spaces in Construction; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID–OSHA–2007–0026]

RIN 1218–AB47

Confined Spaces in Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is adding a new subpart to provide protections to employees working in confined spaces in construction. This new subpart replaces OSHA's one training requirement for confined space work with a comprehensive standard that includes a permit program designed to protect employees from exposure to many hazards associated with work in confined spaces, including atmospheric and physical hazards. The final rule is similar in content and organization to the general industry confined spaces standard, but also incorporates several provisions from the proposed rule to address construction-specific hazards, accounts for advancements in technology, and improves enforceability of the requirements.

DATES: The final rule becomes effective on August 3, 2015.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates Ms. Ann Rosenthal, the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov*.

Technical information: Ms. Jessica L. Douma, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2020 or fax (202) 693–1689; email *douma.jessica@dol.gov*.

For additional copies of this **Federal Register** document, contact: OSHA, Office of Publications, U.S. Department of Labor, Room N3101, 200 Constitution Avenue NW, Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. Electronic copies of this **Federal Register** document, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov*.

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I. Executive Summary

A. Introduction

OSHA last issued rules addressing work in confined spaces in 1993; however, those provisions applied only to general industry work. A single training provision, issued in 1979, applies to confined space work in construction. Following the promulgation of the general industry rule, OSHA agreed to propose a standard for confined spaces in construction as part of a settlement of a legal challenge filed by the United Steelworkers of America. After consulting with the Advisory Committee for Construction Safety and Health (ACCSH) on a draft, and holding several stakeholder meetings in locations across the country, OSHA developed a draft and conducted a Small Business Advocacy Review Panel (SBAR Panel) in 2003. The Agency published its proposed rule for confined spaces in construction on November 28, 2007 (72 FR 67351). The proposal incorporated feedback from ACCSH, the stakeholder meetings, and the SBAR Panel, and addressed issues unique to the construction industry, such as higher employee turnover rates, worksites that change frequently, and the multi-employer business model that is common on construction worksites.

During the SBAR Panel, some small entity representatives expressed a preference for the general industry rule and requested that OSHA consider adopting that rule for the construction industry. When the proposed rule was published, OSHA requested comment on how the Agency could adapt a standard similar to the general industry rule for the construction sector. Commenters indicated that they had been following the general industry rule for quite some time and suggested adopting that standard with some modifications for the construction industry. OSHA considered the unique challenges faced by the construction industry as well as the requests by commenters for more consistency between the general industry and construction standards. The final rule reflects the organization, language, and most of the substantive requirements of the general industry rule. Some of the aspects of the construction industry that are not present in general industry work are addressed by modifications such as information exchange requirements to ensure that multiple employers have shared vital safety information. OSHA also adjusted the construction rule to account for advances in technology and equipment that allow for continuous monitoring of hazards. Other differences between the regulatory text of the general industry rule and this standard reflect improvements in clarity of language and enforcement considerations that have been addressed

in interpretations of the general industry rule.

B. Need for Regulation

Prior to the promulgation of this rule, OSHA had one provision in its construction standards for a general training requirement when employees work in confined spaces. This provision at 29 CFR 1926.21(b)(6) provided limited guidance, instructing employers to train employees as to the nature of the hazards involved, the necessary precautions to be taken, and in the use of protective emergency equipment required. OSHA has determined that this final rule, which provides a higher level of guidance and safety information to employers engaged in this kind of work, will reduce the average number of fatalities and injuries in confined spaces covered by this standard by 96 percent.

C. Affected Establishments

The final rule affects establishments in several sectors of the construction industry, including work involving buildings, highways, bridges, tunnels, utility lines, and other types of projects. Also potentially affected are general contractors, as well as specialty-trade construction contractors and employers engaged in some types of residential construction work.

D. Benefits, Net Benefits, and Cost Effectiveness

OSHA expects the final rule to improve the safety of workers who encounter confined spaces in construction. The programmatic approach of the final rule includes provisions for: Identifying confined spaces and the hazards they may contain; allowing employers to organize the work to avoid entry into a potentially hazardous space; removing hazards prior to entry to avoid employee exposure; restricting entry through a permit system where employers cannot remove the hazard; providing appropriate testing and equipment when entry is required; and arranging for rescue services to remove entrants from a confined space when necessary.

An estimated 6 fatalities and 812 injuries occur annually among employees involved in construction work in confined spaces addressed by the provisions of this rulemaking. Based on a review and analysis of the incident reports associated with the reported injuries and fatalities, OSHA expects full compliance with the final rule to prevent 96 percent of the relevant injuries and fatalities. Thus, OSHA estimates that the final rule will prevent approximately 5.2 fatalities and 780 additional injuries annually. Applying an average monetary value of $62,000 per prevented injury and a value of $8.7 million per prevented fatality (value of statistical life) results in estimated monetized benefits of $93.6 million annually.

OSHA estimated the net monetized benefits of the final rule to be about $33 million annually when costs are annualized at 7 percent ($93.6 million in benefits minus $60.3 million in costs). Table IV–1 summarizes the costs, benefits, net benefits, and cost effectiveness of the final rule.

TABLE IV–1—NET BENEFITS

[Millions of 2009 dollars]

	7% discount rate	3% discount rate
Annualized Costs		
Evaluation, Classification, Information Exchange and Notification	$12.4	$12.2
Written Program, Issue Permits, Verify Safety, Review Procedures	4.2	4.2
Provide Ventilation and Isolate Hazards	2.8	2.7
Atmospheric Monitoring	11.4	11.3
Attendant	3.6	3.6
Rescue Capability	8.2	7.6
Training	11.3	11.3
Other Requirements	6.4	6.3
Total Annual Costs	60.3	59.2
Annual Benefits		
Number of Injuries Prevented		780
Number of Fatalities Prevented		5.2
Monetized Benefits		93.6
Net Annual Monetized Benefits (Benefits Less Costs)		
	33.3	34.4

Totals may not equal the sum of the components due to rounding.
Source: Office of Regulatory Analysis, OSHA. Details provided in text.

E. Compliance Costs

The estimated costs of compliance with this rule represent the additional costs necessary for employers to achieve full compliance. They do not include costs for employers that are already in compliance with the new requirements imposed by the final rule; nor do they include costs employers must incur to achieve full compliance with existing applicable requirements.

OSHA based the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis for the proposed rule, in part, on a report prepared by CONSAD Corp. [2] [1] under contract to OSHA. For the final economic analysis (FEA), OSHA updated data on establishments, employment, wages, and revenues, and updated the analyses in the final rule with these new cost inputs. OSHA estimated the total annualized cost of compliance with the present rulemaking to be between about $59.2 million (when costs are annualized at 3 percent)

[1] References are available at the end of this section of the preamble.

and $60.3 million (when costs are annualized at 7 percent). The final rule's requirements for employers to evaluate, classify, and exchange information account for the largest component of the total compliance costs, at approximately $12.2 million to $12.4 million (when costs are annualized at 3 and 7 percent, respectively). Other compliance costs associated with the final rule include costs related to atmospheric monitoring—($11.3 million to $11.4 million), training ($11.3 million), rescue capability ($7.6 million to $8.2 million), written programs, permits, and review procedures ($4.2 million), attendants ($3.6 million),—and ventilation and hazard isolation ($2.7 million to $2.8 million).

F. Economic Impacts

To assess the economic impacts associated with compliance with the final rule, OSHA developed quantitative estimates of the potential economic impact of the requirements in this rule on entities in each affected industry. OSHA compared the estimated costs of compliance with industry revenues and profits to provide an assessment of potential economic impacts.

The costs of compliance for the final rule are not large in relation to the corresponding annual financial flows associated with the regulated activities. The estimated costs of compliance (when annualized at 7 percent) represent about 0.08 percent (less than 1 percent) of revenues and 1.6 percent of profits, on average, across all entities. One industry, NACIS 23621 Industrial Building Construction, showed the potential for compliance costs to exceed 10 percent of annual profits (10.5 percent), but the Agency concludes that the final standard is still feasible for this industry because it affects less than 2 percent of all firms in that industry sector each year, and OSHA believes that firms engaged in confined spaces work are larger and more profitable than average. Moreover, OSHA does not believe that industries will absorb all or most of the final standard costs in lost profits, as the price elasticity of demand in construction is sufficiently inelastic for minor price increases to offset costs—here, a price increase of less than 0.5 percent (or one-half of 1 percent).

OSHA concludes that compliance with the requirements of the final rule is economically feasible in every affected industry sector.

In addition, based on an analysis of the costs and economic impacts associated with this rulemaking, OSHA concludes that the effects of the final rule on international trade, employment, wages, and economic growth for the United States are negligible.

G. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996 by the Small Business Regulatory Enforcement Fairness Act, requires the preparation of a Final Regulatory Flexibility Analysis for certain rules promulgated by agencies (5 U.S.C. 601–612). Under the provisions of the law, each such analysis must contain: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments; (3) a response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and a detailed statement of any change made to the proposed rule in the final rule as a result of those comments; (4) a description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency took to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and why the agency rejected each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities.

OSHA analyzed the potential impact of the final rule on small and very small entities, as described further under the heading ''Final Regulatory Flexibility Analysis,'' later in this preamble (see Section IV). OSHA concludes that the compliance costs are equivalent to approximately 1.64 percent of profits for affected small entities generally, and less than approximately 0.10 percent (less than 1 percent) of annual revenues for very small industries, though the inelasticity of demand in construction would allow the costs to be offset by price increases in most industries.

II. Background

A. Record Citations

References in parentheses are to exhibits or transcripts in the docket for this rulemaking. Documents from the subpart AA rulemaking record are available under Docket OSHA–2007–0026 on the Federal eRulemaking Portal at *http://www.regulations.gov* or in the OSHA Docket Office. The term ''ID'' refers to the column labeled ''ID'' under Docket No. OSHA–2007–0026 on *http://www.regulations.gov*. This column lists individual records in the docket. This document will identify each of these records only by the last three digits of the record, such as ''ID–032'' for OSHA–2007–0026–0032. Identification of records from dockets other than records in OSHA–2007–0026 will be by their full ID number. In addition, the transcripts for the public hearings OSHA held on July 22–23, 2008 are identified by the docket number in the record under Docket No. OSHA–2007–0026–0210 and –0211. To aid readers in locating citations to the transcripts, this document refers to these citations using the abbreviation ''Tr.'' and the corresponding page numbers, such as ID–201, Tr. pp. 10–15.

B. History

On March 25, 1980, OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) on confined spaces for the construction industry (45 FR 19266). The ANPR posed 31 questions concerning confined-space hazards in the construction industry, and the Agency received 75 comments in response to these questions. However, OSHA took no further action on this regulatory initiative at the time.

The Agency subsequently published a Notice of Proposed Rulemaking (NPRM) for a general industry confined spaces rule on June 5, 1989 (54 FR 24080). OSHA issued the general industry confined spaces rule (29 CFR 1910.146) on January 14, 1993 (58 FR 4462).

The general industry standard requires employers to classify hazardous confined spaces as ''permit-required confined spaces'' and to implement specific procedures to ensure the safety of employees who enter them. It contains detailed procedures for developing a written confined-space program, monitoring atmospheric hazards, isolating physical hazards through lock out tag out procedures, training employees, preventing unauthorized employees from entering these spaces, providing rescue (both non entry and entry rescue), and maintaining records. The general industry standard specifies a limited

exception from some of the permit-required confined-space requirements when the only hazard in a confined space is an atmospheric hazard and ventilation equipment will control the atmospheric hazard at safe levels. It also provides protection to employees from non-atmospheric hazards (for example, physical hazards) in confined spaces. However, the general industry standard does not apply to construction employers, and, as such, does not specify the appropriate level of employee protection based on the hazards created by construction activities performed in confined spaces.

In 1993, as part of the litigation activity associated with the newly promulgated general industry standard, OSHA agreed in a settlement with the United Steel Workers of America to issue a proposed rule to extend confined-space protection to construction employees. On February 18, 1994, OSHA submitted a draft proposed standard for confined spaces in construction to the Advisory Committee for Construction Safety and Health (ACCSH) for comment. ACCSH established a work group on March 22, 1994, to address the OSHA draft proposed standard and report its findings to the full committee. ACCSH adopted the work group report on May 17, 1994 and recommended that OSHA incorporate it into a rulemaking docket. In this report, ACCSH noted that the general industry standard did not meet the needs of the construction industry. ACCSH found that employers often do not identify or classify confined spaces encountered or generated at construction worksites prior to the beginning of a construction project, and noted the difficulties faced by employers generally on construction worksites, where conditions often change rapidly and many different subcontractors may perform work simultaneously.

Consequently, ACCSH established a work group to draft a proposed standard that would meet the unique needs of the construction industry. The draft proposed standard emphasized identifying different types of confined spaces encountered in construction (for example, spaces in which the employer isolates all hazards or controls atmospheric hazards at safe levels, and spaces that are permit-required spaces), as well as inter-contractor information exchange and the detailed protections necessary to eliminate or control specific hazards.

As the result of the ACCSH work group review, ACCSH submitted a draft proposed standard for confined spaces in construction to OSHA in 1996. ACCSH recommended that OSHA use the draft as a proposed confined spaces standard. OSHA determined that the ACCSH draft proposed standard needed revision to make it easier to understand, especially for small employers that do not employ a separate safety staff. The Agency also determined that the draft proposed standard did not address adequately certain hazards, such as hazards encountered in sewer-construction work. Consequently, OSHA determined that it was necessary to develop a new draft proposed standard.

In 1998, OSHA completed a new draft proposed standard, but discovered that there were several issues that the Agency needed to resolve before it could finalize the draft proposed standard. To get feedback from the construction community, OSHA held three stakeholders meetings in October of 2000 across the country. The topics discussed at the stakeholder meetings were: (1) Typical confined spaces encountered in construction; (2) whether the proposed standard should require an early-warning system for spaces in which the employer could not isolate an engulfment hazard (such as in some sewer situations); (3) the need for, and cost of, continuous monitoring for atmospheric hazards; (4) how a confined spaces standard for construction could accommodate the needs of small businesses; and (5) whether the proposed standard should permit an attendant to perform his or her duties for more than one confined space at a time.

In late 2003, OSHA completed drafting the proposed standard and convened a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to solicit comments on the proposal from small business entities. The SBREFA panel conducted two conference-call discussions, which were open to the public, in which small entity representatives expressed their concerns about the draft proposed standard; these representatives also submitted written comments to the record that covered the issues. The SBREFA panel then submitted its recommendations to the Agency in November 2003.

The Agency published a proposed rule for confined spaces in construction on November 28, 2007 (72 FR 67351). The proposed confined spaces standard for construction reflected input from stakeholder meetings, ACCSH, and the SBREFA review process. For example, OSHA removed a provision that addressed working in hazardous enclosed spaces (*i.e.,* spaces designed for human occupancy but subject to a hazardous atmosphere), which small business entities participating in the SBREFA review process considered burdensome and unnecessary; OSHA removed this provision because it believes that existing construction standards (for example, 29 CFR 1926.55) adequately address these hazards. The proposed standard used a confined-space classification approach consistent with the ACCSH recommendations. OSHA organized the proposed standard chronologically to guide the employer from its initial encounter with a potential confined space through the steps necessary to ensure adequate protection for employees. In addition, it addressed the need for coordination and information exchange at construction sites, which typically have multiple employers.

The Agency recognized that a number of requirements in the proposed standard for confined spaces in construction duplicated, or were similar to, the provisions of the general industry standard for permit-required confined spaces. Nevertheless, OSHA had concerns about whether the general industry standard adequately addressed the unique characteristics of confined spaces in construction. The feedback that OSHA received from ACCSH, stakeholders, and the SBREFA process indicated that, compared to general industry, the construction industry experiences higher employee turnover rates because construction employees often work at multiple worksites performing short-term tasks. Unlike most general industry worksites, construction worksites are continually evolving, with the number and characteristics of confined spaces changing as work progresses. Also, multiple contractors and controlling contractors are more common on construction worksites than general industry worksites. Therefore, a construction standard for confined spaces, even more so than the general industry standard for confined spaces, must emphasize training, continuous worksite evaluation, and communication requirements

Decision to abandon the proposed new classification system and adapt an alternative that is more similar to the general industry standard.

During the SBREFA review process, some small entity representatives urged OSHA to consider adopting the general industry standard for construction, and to solicit comment on how the Agency could adapt an alternative standard similar to the general industry standard to the construction sector. When the Agency published the proposed construction standard, it requested

public comments on how to adapt an alternative standard similar to the general industry standard for the construction industry (72 FR 67352, 67401 (Nov. 28, 2007)). During the comment period and the public hearings OSHA held on July 22–23, 2008, OSHA received many comments and much testimony regarding the issue of using an adapted version of the general industry standard as the basis for the final rule rather than the new classification systems proposed in the NPRM. A clear majority of comments were in favor of finalizing a confined spaces in construction standard that more closely resembles the general industry standard for confined spaces. (See, *e.g.,* ID–032; –047; –075; –088; –092; –095; –105; –106; –115; –117; –118; –119; –120; –121; –125; 150; –152; –153; 185; –189; –210, Tr. pp. 54–60, 74–76, 174–175, 282–284; –211, Tr. pp. 73, 172, and 238–239.) Several commenters proposed adopting the general industry standard with some adaptations for the construction context, though not all of these commenters specified, or agreed on, what specific adaptations were appropriate (see, *e.g.,* ID–092; –117; –125). The Agency received a number of comments suggesting that many construction employers were currently following the general industry confined spaces standard (see, *e.g.,* ID–075; –085; –088; –092; –095; –112; –117; –118; –120; –121; –125; –147).

For the reasons discussed in the preamble to the proposed rule, and in light of the comments and testimony the Agency received, OSHA remains convinced that the general industry standard does not adequately address confined-space hazards as these hazards arise in the construction industry. Moreover, the 19 years of experience that employers have working with the general industry rule, and that OSHA has enforcing the general industry rule, highlight several areas in which additional clarification in the language of the general industry standard could improve the effectiveness of a new construction standard. Therefore, OSHA is not simply incorporating the general standard by reference into the construction standards.

OSHA believes that the particular duties and obligations in the general industry standard and the proposed construction standard are similar, and that the public's confusion over the re-organized structure in the proposed rule is the result of the degree of detail in the proposed rule, as well as its organization. Most notably, compared to the general industry rule, the proposed rule added specificity to the general industry standard's broad, performance-based requirements, and defined a larger number of confined-space classifications.

Nevertheless, in recognition of the commenter requests for more consistency between the two standards, OSHA is using the organization, language, and most of the substantive requirements in the general industry confined spaces standard as the basis for the final confined spaces in construction rule. However, differences in employee and worksite characteristics between the construction industry and general industry, as well as the comments and testimony of the regulated community indicating the need for consistency and continuity in OSHA requirements, prompted OSHA to develop a final rule for confined spaces in the construction industry that contains important requirements from the proposed rule and some additional changes. Many of these changes, such as the information exchange requirements, are designed to address the heightened need, on constantly evolving construction worksites for communication, worksite evaluation, and training for confined spaces in construction. In addition, several regulatory provisions in the general industry rule differ from the regulatory provisions of this final rule because the provisions of this final rule: (1) Address construction-specific issues; (2) account for advancements in technology; (3) address concerns raised by the regulated community through comment and at the hearing; or (4) reflect improvements in language for modern regulatory drafting (''must'' in place of ''shall''), clarity and enforcement considerations. In most cases, the preamble that follows this introductory section explains the differences between the provisions of the final rule and the general industry rule.

The Agency believes that it provided adequate notice of the substantive terms of the final rule, as well as an extensive description of the subjects and issues involved. Accordingly, the Agency fairly apprised interested persons of the content of the rulemaking, and the comments and hearing testimony provide ample evidence that interested parties to the rulemaking understood the issues and potential outcomes of the rulemaking. See, *e.g., Nat'l Mining Ass'n* v. *Mine Safety & Health Admin.,* 512 F.3d 696, 699 (D.C. Cir. 2008); *Miami-Dade County* v. *U.S. E.P.A.,* 529 F.3d 1049, 1059 (11th Cir. 2008); *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1221 (D.C. Cir. 1980) (''a final rule may properly differ from a proposed rule and indeed must so differ when the record evidence warrants the change. . . . Where the change between proposed and final rule is important, the question for the court is whether the final rule is a 'logical outgrowth' of the rulemaking proceeding''). The resulting final standard is a logical outgrowth of the proposal, and the number of comments urging an adapted version of the general industry standard provides a clear indication that the affected members of the public are not only familiar with the general industry standard, but also viewed the inclusion of part or all of the general industry standard's structure and language as a potential outcome of this rulemaking. The confined-space issues the Agency addresses in the final rule are the same as in the proposed rule, and the Agency addressed the criticisms and suggestions made by interested parties in response to the proposed rule. In short, the combination of OSHA's request for comment on the approach that it ultimately adopted in the final rule, the explanation of the hazards it sought to address in proposal, and the comments and testimony received in response to the proposal provided the regulated community with adequate notice regarding the outcome of the rulemaking. Therefore, the Agency concludes that there is no basis for further delaying promulgation of the standard to obtain comment on the approach adopted in this final rule.

Many of the comments OSHA received on the proposal related to specific requirements included in the detailed procedures of the proposed standard. As a result of finalizing a confined spaces in construction standard that closely resembles the general industry standard, much of this detailed language does not appear in this final rule. In some cases, OSHA addressed the substance of the comment in the discussion of the most relevant preamble section in this final rule. In other instances, the issue raised in the comment became moot as a result of OSHA's decision not to include the proposed text in the final rule. Therefore, OSHA is not directly responding to each of these particular comments in the summary and explanation of the final rule.

OSHA considered, but ultimately rejected, several other regulatory alternatives based on the comments submitted to the Agency. For example, some commenters suggested that employers should have the option of following either 29 CFR 1910.146 or this final rule (ID–089, p. 2; –147, p. 4). This suggestion relates to some commenters' concern that having separate rules for confined spaces in construction and

general industry makes it confusing for employers that perform both construction and maintenance inside a confined space to comply with the different requirements of each rule based on the type of the work they are performing (see, *e.g.,* ID–119, p. 3). OSHA developed this standard because of the unique hazards of confined-space work in construction and, although this final rule is similar to § 1910.146, there are differences when certain procedures are necessary to protect employees from the unique hazards of construction confined-space work. Therefore, an employer does not have the option of bypassing the procedures that are unique to this final rule by complying instead with § 1910.146. Such a policy would severely undermine OSHA's effort to protect employees from the unique hazards present during confined-space operations in construction.

OSHA recognizes that the differences between § 1910.146 and this final rule can make it more complicated for employers to comply with two different sets of procedures if they perform maintenance and construction work at the same time in the same confined space. In order to ease the compliance burden on these employers, OSHA will consider compliance with this final rule as compliance with § 1910.146. This enforcement policy was suggested by at least one commenter (ID–211, Tr. p. 303).

Another commenter suggested that OSHA issue a directive on confined-space work in construction instead of a final rule (ID–100, p. 5). OSHA generally issues a directive on a particular work practice after the Agency issues a rule, not in lieu of a rule; accordingly, the directive provides guidance as to how the Agency will enforce a standard. The rulemaking process, on the other hand, provides the public with notice and an opportunity to comment on the Agency's proposed action, and the Agency may use the information gathered during this process to impose substantive duties on employers, such as employers engaged in confined-space construction work. The information gathered by the Agency during the rulemaking process for this final rule supports issuing a final rule for confined-space work in construction. Therefore, OSHA rejects the alternative approach suggested by the commenter.

A different set of commenters focused on individual states' confined spaces standards. One commenter asserted that several State-Plan States have effective confined space standards and that this rule will unnecessarily force those states to change these standards (ID–135, p. 3). A similar comment discussed Virginia's confined spaces rule, but did not suggest OSHA adopt that rule (ID–047, p. 1). Another commenter suggested OSHA adopt the majority of California's confined spaces rule (ID–077, p. 1). OSHA notes that the Occupational Safety and Health Act of 1970 (OSH Act) allows for different regulatory schemes to address the hazards of confined-space work provided those standards are at least as effective as the Federal OSHA standard. The record indicates that, by issuing a final rule that is similar to § 1910.146, OSHA is not drastically changing industry practice for addressing confined-space hazards. (See, *e.g.,* ID–047; –075; –085; –088; –092; –095; –112; –117; –118; –120; –121; –125; –147; –189.) Therefore, OSHA believes that State-Plan States that have standards applicable to construction work in confined spaces that are similar to § 1910.146 will not have to make major changes to their existing rules to ensure that these rules are at least as effective as this final rule. When a State-Plan State's confined spaces rule is not as effective as this final rule, OSHA believes that the record warrants a change in the State-Plan State's rule so that it will provide construction employees with the same level of protection afforded to them by this final rule. For a full discussion of State-Plan States, see Section IV.E (''State-Plan States'') later in this preamble.

C. Need for a Rule Regulating Confined Spaces in Construction

Before promulgating this final rule, OSHA had one existing provision in its construction standards that included a general training requirement for employers working in confined spaces. A broad ''safety and training'' requirement in 29 CFR 1926.21(b)(6), adopted by the Agency in 1979, provided limited guidance: Under this provision, employers were only required to instruct employees required to enter into confined or enclosed spaces as to the nature of the hazards involved, the necessary precautions to be taken, and in the use of protective and emergency equipment required. Fatality and injury data, OSHA enforcement experience, and advice from ACCSH indicate that § 1926.21(b)(6) did not adequately protect construction employees in confined spaces from atmospheric, physical, and other hazards. Even when § 1926.21(b)(6) applied, it required employers only to train employees who work in confined spaces—it did not address how to protect trained employees while they are working in such spaces, nor did it address the actions of employers outside the spaces engaged in activities that might harm employees inside the spaces. For situations in which none of the construction standards apply, the employer was still required to comply with the general-duty requirement of the OSH Act to ''furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees'' (29 U.S.C. 654), but this ''general duty'' is often more difficult for OSHA to enforce and does not provide the same level of guidance and safety information provided in a standard.

As noted in the economic analysis section of the preamble to this final rule, OSHA determined that employees in the construction industry who perform work in confined spaces face a significant risk of death or serious injury, and that this final rule would substantially reduce that risk. At present, OSHA estimates that 20,479 establishments annually have employees entering at least one confined space as defined by this final rule. OSHA estimates that, each year, 6 fatalities and 900 injuries occur among employees working in confined spaces covered by this final rule. OSHA determined that the final rule, when implemented properly by employers, will reduce the average number of fatalities and injuries in confined spaces covered by this standard by 96 percent (5.2 fatalities prevented annually, and 780 injuries prevented annually). (For further explanation of the significant-risk calculations, see section V.B. (''Final Economic Analysis and Regulatory Flexibility Analysis'') of this document.)

III. Summary and Explanation of the Final Standard

Explanation of Changes to Subpart V—Power Transmission and Distribution

Subpart V of part 1926 governs construction work involving power transmission, generation, and distribution. OSHA recently updated subpart V (79 FR 20316 (April 11, 2014). When it did so, OSHA required compliance with the general industry confined-spaces standard at § 1910.146 in several provisions of subpart V. OSHA did so because at that time there was no comprehensive confined-spaces standard for construction, but the Agency explained in the subpart V preamble that ''the references to the general industry standard in final § 1926.953 are included as a placeholder

pending the promulgation of the confined spaces in construction standard. OSHA intends to change these references to refer to the construction standard when it promulgates that standard.'' (79 FR 20376) OSHA is, therefore, amending subpart V in this rulemaking to replace references to the general industry confined spaces standard with references to this final construction rule, because OSHA specifically tailored this final rule to construction work, making the confined spaces in construction rule more appropriate than the general industry standard for construction work addressed by subpart V.

Amendments to Definition of ''Enclosed Space'' in § 1926.968

An ''enclosed space'' is a term of art under subpart V and the corresponding general industry standard for electric power generation, transmission, and distribution (§ 1910.269) describing a workspace such as a manhole or vault that is designed for periodic employee entry under normal operating conditions, and that, under normal conditions, does not contain a hazardous atmosphere, but may contain a hazardous atmosphere under abnormal conditions (§ 1910.269(x) and § 1926.968). There is overlap between an enclosed space and a ''permit-required confined space'' (permit space) as defined in the confined spaces standards for general industry (§ 1910.146) and construction (new subpart AA): An enclosed space meets the definition of a permit space—while it is not expected to contain a hazardous atmosphere, it has the potential to contain one—but the definition of permit-space is broader than the definition of enclosed space. For instance, if a space contains a hazardous atmosphere under normal conditions, that space is a permit space under § 1910.146 or new subpart AA, but it is not an enclosed space under final § 1910.269 or subpart V.

The note to the definition of ''enclosed space'' in § 1910.269(x) states that enclosed spaces expected to contain a hazardous atmosphere meet the definition of permit spaces in § 1910.146, and entry into them must conform to that standard. Subpart V, however, did not have any definition of ''enclosed space'' until OSHA amended it in 2014 by adding a definition that matched the general industry definition in § 1910.269(x) except that it did not include the note. OSHA explained in the preamble to the subpart V amendments that it did not include the note at that time because there was no comprehensive corresponding confined spaces construction standard to reference in place of § 1910.146, but OSHA intended to add a corresponding note to § 1926.268 when it promulgated the new construction confined spaces standard (see 79 FR 20376–20377). As part of this rulemaking, OSHA is therefore adding a note to the definition of ''enclosed space'' in § 1926.968 that corresponds to the note in § 1910.269(x), replacing the reference to § 1910.146 with a reference to subpart AA.

Amendments to § 1926.953

Prior to this rulemaking, § 1926.953(a) in subpart V, as amended in 2014, required that entry into an enclosed space to perform construction work meet the permit-space entry requirements of paragraphs (d) through (k) of § 1910.146 when the precautions taken under §§ 1926.953 and 1926.965 were insufficient to eliminate hazards in the enclosed space that could endanger the life of an entrant or interfere with escape from the space. Similarly, § 1926.953(g) stated that employees may not enter any enclosed space while it contains a hazardous atmosphere, unless the entry conforms to the permit-required confined spaces standard in § 1910.146. OSHA is amending §§ 1926.953(a) and 1926.953(g) by replacing each reference to § 1910.146 with a reference to subpart AA so that the appropriate construction standard, rather than a general industry standard, will apply.

OSHA is also adding a sentence to § 1926.953(a) to clarify that employers may comply with the requirements of § 1926.953 ''in lieu of'' most of the requirements in new subpart AA when the entry into the enclosed space is a routine entry for subpart V work and there is no hazardous atmosphere in the space. Without this clarifying sentence, employers could have been confused about which standard applied. OSHA determined that § 1926.953 provides adequate protection to employees in that situation and announced in the subpart V preamble that it intended to add the sentence when it issued this final rule (see 79 FR 20376).

The new ''in lieu of'' sentence in § 1926.953(a) corresponds to a similar sentence in § 1910.269(e) specifying that employers are not required to comply with § 1910.146(d) through (k) for the same type of routine entries into enclosed spaces. OSHA has used slightly different wording from the language in § 1910.269 to emphasize that ''in lieu of'' language is only applicable where the entry is routine and the space does not contain hazards that could cause death or impede exit. As with the general industry standard, the new sentence in § 1926.1953(a) only exempts employers from compliance with some, but not all, of subpart AA's requirements. In the ''in lieu of'' sentence in § 1910.269, OSHA only excuses employers from compliance with § 1910.146(d) through (k) for these routine entries, but employers must still comply with the requirements in § 1910.146(c) and (l), including the requirements to assess the space, prevent unauthorized entry, communicate with and coordinate with the host employer when applicable, and to involve entrants and their representatives in the process. Likewise, in § 1926.953(a), the enclosed spaces requirements apply in lieu of the permit requirements in § 1926.1204 through § 1211, but employers still need to comply with subpart AA's corresponding requirements in § 1926.1203 to assess the space, prevent unauthorized entry, and coordinate with and communicate with the controlling contractor, in addition to the requirements in § 1211 to involve entrants and their representatives in the process.

Finally, in addition to some minor, non-substantive grammatical changes to improve the paragraph, OSHA is also revising the note to paragraph § 1926.953, which appears at the end of the section, by replacing its reference to § 1910.146 with a reference to new subpart AA. The note clarifies that OSHA considers employers who comply with new subpart AA when entering an enclosed space as in compliance with § 1926.353(a). Some employers may prefer to comply with new subpart AA rather than § 1926.353(a), and subpart AA protects employees entering enclosed spaces at least as effectively as the provisions in § 1926.353.

Section 1926.1201—Scope

The scope of new 29 CFR part 1926, subpart AA—Confined Spaces in Construction is set forth in 29 CFR 1926.1201. This subpart provides minimum safety and health requirements and procedures to protect employees who work in confined spaces. It addresses how to protect employees from confined-space hazards. The final rule includes requirements for training, identification and assessment of confined spaces, hazard analysis, entering, working, exiting, and rescue for confined spaces containing a variety of different hazards.

The proposed rule contained an ''Introduction'' section that provided a general overview of the standard and stated that the proposed standard would cover ''working within or near a confined space that is subject to a

hazard'' (see proposed § 1926.1201(a)). OSHA removed the ''Introduction'' section to make this final rule similar to § 1910.146, and to avoid confusion caused by potential overlap with the ''Scope'' provisions. Section 1926.1201 in the final rule is the scope section.

Paragraph (a). Although many commenters urged OSHA to conform this final rule to the general industry standard as much as possible, the scope section for confined spaces in general industry at § 1910.146(a) expressly excludes construction work. Therefore, it is impractical for OSHA to change the language in final rule § 1926.1201 to mirror § 1910.146(a). Instead, OSHA structured the scope section in final rule § 1926.1201 in a manner that draws from the language in the scope sections of the general industry standard and the proposed rule. As with the scope of the general industry standard, which states that it protects employees from the hazards of entry in permit-required confined spaces (§ 1910.146(a)), OSHA phrased final § 1926.1201(a) in terms of the employees protected by the final standard. In contrast, the scope of the proposed rule focused on employers (see proposed § 1926.1202(a)). While the final standard necessarily imposes the duties exclusively on employers, OSHA concluded that phrasing the scope in terms of employers ''who have confined spaces at their job site'' was potentially more problematic than the general industry approach because the regulated community could misinterpret the proposed language as requiring some analysis of the extent to which the employer exercised control over a particular part of a construction site.

A number of commenters expressed confusion about the description of the standard included in the proposed introduction, which appeared to function as an additional statement about the scope of the rule (see, *e.g.,* ID–032.0; –100.1; –105.1; –114.1; –119.1; –120.1; –125.1; –135.0.) In particular, many commenters asserted that the reference to work ''within or near a confined space,'' as used in the proposed description of the standard, was too vague, and requested that OSHA clarify its meaning. (See, *e.g.,* ID–031, p. 4; –061, p. 7; –095, p. 1; –101, p. 2; p. 1; –106, p. 1; –117, p. 7; –120, p. 2; –121, p. 8; –124, p. 4; p.–125, p. 5.) In response, OSHA did not include the phrase ''within or near a confined space'' in the scope section in this final rule. Instead, in final § 1926.1201(a), OSHA describes the scope in more definite terms by stating that the new standard protects employees engaged in construction activities at a worksite with one or more confined spaces, which is similar to the language of the proposed rule except that it avoids the reference to ''their job site.'' The language in final § 1926.1201(a) incorporates a bright-line test (whether or not the worksite has a confined space) to underscore two important points in the final rule that also are true for the general industry standard and the proposed rule: First, all employers engaged in construction have a duty under the final standard to ensure that their employees do not enter a confined space except in accordance with the requirements of the standard, and the presence of a confined space on the worksite triggers this duty rather than the type of work the employer is performing. Second, there are critical components of this standard, such as information sharing and coordination of work, that apply to certain employers that, regardless of whether their employees are authorized to enter a confined space, have information necessary for the protection of employees working inside confined spaces, or are engaged in activities that could, either alone or in conjunction with activities inside the confined space, endanger the employees working inside a confined space. Final § 1926.1201(a) makes it clear that the focus of the final standard is on the type of work performed, and whether that work could produce, and expose employees to, confined space hazards. Although final § 1926.1201(a) differs slightly from proposed § 1926.1202(a), this difference does not affect the scope of the final rule; it merely makes the scope more precise than the scope of the proposed rule. This change also is consistent with the proposed ''Introduction'' section in proposed § 1926.1201(a).

Final § 1926.1201(a) includes a note with a non-exhaustive list of potential confined spaces that commonly occur on a construction worksite. This list provides examples for employers who may be unfamiliar with confined spaces in construction. The note to final § 1926.1201(a) is identical to the note to proposed § 1926.1202(a).

One commenter asserted that OSHA should exclude steel tanks, which OSHA included in the list of examples of confined spaces in construction in the proposed rule, from the new standard when the tanks are under construction because this activity does not produce an atmospheric hazard (ID–138, p. 2; –214.1, p. 4; –210, Tr. p. 217). In particular, the commenter asserted that contractors typically do not close entirely steel tanks under construction until the final phase of construction and that, prior to the final phase, the tanks typically have sufficient natural ventilation to prevent a hazardous atmosphere from forming. The final phase is typically conducted without any employees inside the tank (ID–210, Tr. p. 5).

Whether a confined space exists is a separate analysis from whether a hazard exists, unless the hazard prevents unrestricted egress from the space. A steel tank is a confined space at any stage of construction when it has limited or restricted means for entry and exit (see the definition of a confined space in § 1926.1202, which is discussed later in this preamble). However, OSHA recognizes that a significant portion of steel-tank construction activity may not result in work inside a confined space if contractors generally do not assemble the tank sections in a manner that would place an employee inside a space with limited egress. Even when construction of the tank results in such a space, the space may not contain a hazard that would render it a permit-required confined space. If the space is not a permit-required confined space, then the employer's duties are very limited. In such spaces, the employer's responsibility under this standard would be limited to verifying what the commenter asserts is true: There is no atmospheric hazard or other hazard. Nevertheless, the commenter acknowledged that welding activities in some steel tank construction, particularly for relatively small tanks, could produce the types of hazardous atmospheres this standard is intended to address (ID–210, Tr. pp. 228–229). Thus, OSHA is not categorically excluding steel tanks from coverage under this standard and continues to include steel tanks in the list of potential confined spaces to alert employers that the process of steel-tank construction could place employees in a space that meets the definition of a permit-required confined space.

Another commenter asserted that the note did not include wind turbines (ID–210, Tr. p. 154). This commenter misunderstood the reference to ''turbines'' in the note in the proposed and final rules. The reference to ''turbines'' is general, and applies to all turbines that meet the definition of a confined space.

It is important to note that only the presence of a hazard inside a confined space will trigger the majority of procedures required by this final rule. One commenter asserted that limited egress is a continual hazard to every employee in a confined space, regardless of whether any other hazards exist (ID–060, p. 3). Therefore, the

commenter argued that the permit requirements of this final rule, including the requirement to have a rescue service available, should apply to all confined spaces, even those spaces in which another hazard does not exist. This approach would apparently treat all confined spaces as permit spaces, which would be a radical departure from OSHA's longstanding treatment of confined spaces in the general industry. OSHA does not agree that such a departure, or the additional costs that employers would incur because of such departure, are warranted in the absence of employee exposure to some hazard inside the confined space. Limited egress in a confined space is a safety concern only when an employee cannot readily exit a confined space to avoid being exposed to a hazard within the space. Limited egress, by itself, is unlikely to injure or kill an employee. If limited egress is the only safety concern, then OSHA concludes that it is not reasonable to require employers to comply with the provisions of this final rule that pertain to permit spaces. In such a circumstance, employers already must follow existing construction standards that apply to work in an enclosed space (for example, § 1926.353—Ventilation and protection in welding, cutting, and heating at, and § 1926.55—Gases, vapors, fumes, dusts, and mists).

Another commenter noted that the shipyard employment standard at 29 CFR part 1915 includes confined spaces requirements and was unsure whether this new construction standard will apply to confined space construction work performed in a shipyard (ID–028, p. 1). It will. OSHA focuses on the type of work activity, not necessarily the location of the work activity, in determining whether this confined spaces in construction standard or the shipyard employment standard, part 1915, applies. See, *e.g.,* Feb. 9, 2004, letter to Jack Swarthout.[2] The shipyard employment standards apply to ship repairing, shipbuilding, ship breaking, and related employment. This confined spaces in construction standard covers confined space work in shipyards to the extent that it is construction work and is not ship repairing, shipbuilding, ship breaking, or related employment. An example in which this confined spaces in construction standard applies is the construction of a building on the grounds of a shipyard. Non-construction work performed in a shipyard is not subject to this final rule; either § 1910.146 or the shipyard employment standard at 29 CFR part 1915, subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment would cover such work.

Paragraph (b) Exceptions. This paragraph explicitly excludes construction work regulated by 29 CFR part 1926, subpart Y—Diving, construction work regulated by 29 CFR part 1926, subpart P—Excavation, and construction work regulated by 29 CFR part 1926, subpart S—Underground Construction, Caissons, Cofferdams and Compressed Air from the scope of this final rule. Accordingly, this provision exempts employers operating under one of the three listed exemptions from complying with this final rule for work within a confined space, so long as that work falls within the scope of one of the listed subparts.

The Agency exempted each type of work covered by the listed subparts from the requirements of this standard because OSHA specifically tailored the existing requirements in these subparts to protect employees from the hazards associated with confined spaces. In addition, OSHA believes that overlapping standards covering these activities could be unnecessarily burdensome to employers, or cause some confusion about the appropriate procedures to use.

Under § 1926.1201(b)(3), this confined spaces standard does not apply to construction activities covered by 29 CFR part 1926, subpart Y, which encompasses diving and related support operations conducted in connection with all types of work and employments, including construction (29 CFR 1926.701, referencing 29 CFR 1910.401). As defined in subpart Y, a ''diver'' is an employee working in water using underwater apparatus which supplies compressed breathing gas at the ambient pressure (§ 1926.701, referencing § 1910.402). The Agency notes that, if a diver engages in construction activity in an area that meets the definition of a confined space under this final rule, and is not working in water or removes his/her underwater breathing apparatus, then, in most cases, the activity is outside the scope of subpart Y because the employee is no longer a ''diver''; in such a case, the requirements of this confined spaces standard apply instead.

The other exemptions set forth in final § 1926.1201(b) are identical to the proposed exemptions except that OSHA removed the ''non-sewer'' limitation for the exemption that applies to 29 CFR part 1926, subpart P—Excavations and 29 CFR part 1926, subpart S—Underground Construction. Under § 1926.1201(b)(1) and (b)(2), OSHA exempted construction activities covered by subparts P and S. In its explanation in the proposed rule, the Agency noted that subparts P and S generally provide adequate protections against hazards in excavations and underground work (72 FR 67356 (Nov. 28, 2007)). In light of the additional hazards associated with sewers as continuous systems that often have hazardous atmospheres and engulfment hazards, the Agency proposed limiting the Excavations, and Underground Construction exemptions to ''non-sewer'' work, which would have the effect of applying this final standard, in addition to subpart P or subpart S, whenever an employer performed excavation or trenching construction work related to a sewer system. One commenter urged OSHA to limit the exemption further, characterizing subpart P as ''insufficient for addressing potential worker exposures to hazardous atmospheres,'' and asserting that this final rule should apply to excavations where a hazardous atmosphere exists because the confined spaces standard would provide more comprehensive protection for employees than the excavation standard (ID–105, p. 5). The commenter did not, however, provide any basis for this assessment. Two commenters emphasized the significance of the hazards posed by excavation, and urged OSHA to protect employees from those hazards; however, they did not discuss subpart P—Excavations and did not provide a clear rationale for why those standards do not provide adequate protection for employees working in excavations (ID–032, p. 4; –034, p. 1).

A different commenter asserted that OSHA should apply the confined spaces standard to hazards in excavation work not covered by the excavation requirements (ID–025, p. 2). In other words, OSHA should exempt excavation work unless there is a hazard present not addressed by subpart P—Excavations, but addressed by this confined spaces standard, in which case the confined-space requirements applicable to addressing that specific hazard would apply. The commenter did not provide an example of a hazard that could be present in excavations but not addressed by subpart P. Also, OSHA believes that the approach advocated by the commenter would lead to confusion, and may not promote safety. OSHA designed the confined spaces standard to work as a comprehensive system, not through piecemeal application. Therefore, OSHA concludes that it is

[2] All of the letters and memoranda included in this preamble are available at *www.osha.gov.*

not appropriate to limit the exemption as requested by the commenter.

Another commenter asserted that the excavation standards in subpart P do not provide protection against hazards associated with applying waterproofing products on building foundations below grade level (ID–106). OSHA disagrees with this commenter. Even assuming that the particular waterproofing product used would constitute an atmospheric hazard, 29 CFR 1926.651(g) requires an employer to test for atmospheric hazards and to take adequate precautions to protect employees accordingly.

Most of the commenters who addressed the issue of the potential overlap between this final standard and the excavation and underground construction requirements in subparts P and S, respectively, requested that OSHA expand the exemption to exclude all work subject to those standards from the scope of the final rule, regardless of whether the excavation or underground work connects to a sewer, because other OSHA standards, primarily subpart P, adequately cover such work (ID–060, p. 1; –108, p. 2; –117, p. 6; –124, p. 3; –140, p. 6; –143, p. 1). One of these commenters noted that subpart P's requirements ''include testing the trench/excavation(s) before workers enter them when a hazardous atmosphere exists or could reasonably be expected to exist (*e.g.* excavations near landfills or in areas where hazardous substances may be stored) and providing proper respiratory protection or ventilation to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions,'' and also include appropriate rescue provisions (ID–117, pp. 6 and 7). Furthermore, several of the commenters asserted that applying both this final rule and the excavation standards to work inside all excavations would result in a confusing and disjointed regulatory scheme that could reduce employee safety (ID–060, p. 1; –108, p. 2; –117, p. 6; –140, p. 6). OSHA agrees with these comments and, therefore, the Agency excluded all excavation work from the scope of the final rule (see § 1926.1201(b)(1)).

Although the exemption in the final rule may be broader than the proposed exemption because the final rule does not cover underground sewer work and sewer excavation work, the expanded exemption is still consistent with OSHA's intent in the proposed rule. In proposing to apply the confined spaces standard to all sewer work, the Agency emphasized the extraordinary dangers associated with sewer systems, including the difficulties in isolating hazards in a contiguous system, and the extremely hazardous atmospheres that can develop in sewers and quickly cause fatalities. These dangers, however, primarily involve *existing* sewer structures, rather than construction of new sewer systems; new systems would not necessarily present such hazards until connected to an existing sewer system. Under this final rule, the limitations on the scope of subparts P and S will ensure that the confined-space requirements apply to most construction work *within existing* sewer structures, as explained in the following discussion of the interaction between this confined spaces standard and subparts P and S. In the context of sewer work, the principal hazards associated with the *excavation* work around the sewer lines are likely to be atmospheric hazards that arise from the soil surrounding an existing sewer pipe (from leaching or other sources), as well as potential hazards associated with the release of hazardous substances from the sewer pipe. These hazards are similar to the hazards encountered during excavation and underground work near landfills and water mains that OSHA exempted from coverage in the proposed rule because OSHA regarded the protections of subparts P and S as sufficient (see 72 FR 67356).

OSHA considered the common scenario in which an employer digs down to an existing sewer line, then excavates a new trench in which it lays new sewer pipe and connects it to an existing sewer line. During the ''tie in'' process of connecting the new sewer pipe to the existing sewer line, employees could potentially be exposed to atmospheric hazards and physical hazards emanating from the existing sewer line. While any entry into the existing sewer line, including placing any part of the body inside existing line (see definition of ''entry'' in § 1926.1202), would be governed by the confined spaces standard, OSHA does not believe that hazards from the existing sewer line should subject the entire excavation project to the confined spaces standard. Employers already have a duty under subpart P to address the atmospheric and physical hazards in the excavation, and employers must anticipate and address the hazards that might come from the existing sewer line. Employers must use extreme caution in unsealing the existing sewer line. Before opening the existing line, employers must, whenever possible, isolate the existing line to be opened from the rest of the sewer and ensure that employees are removed from the excavation.

Based on the record, OSHA concludes that subparts P and S are also sufficient to address the hazards associated with excavation work around sewers and the construction of new sewers, while the confined spaces standard will address the work inside the sewer pipes where the atmospheric and physical hazards are greatest.

Clarification of the Scope of Subparts P and S

OSHA does not intend for this final standard to overlap with 29 CFR part 1926, subpart P or 29 CFR part 1926, subpart S. Each of these standards contains specific provisions addressing many of the same hazards that could arise in the same space. The Agency is, therefore, taking this opportunity to clarify the scope of subparts P and S relative to the scope of this final confined spaces standard, thereby simplifying the regulatory scheme for employers working in these spaces.

Subpart P applies to ''all open excavations made in the earth's surface,'' including trenches (§ 1926.650(a)). For example, the work of digging trenches, shoring up the trenches, and placing a sewer pipe or other materials into the trenches are subject to subpart P. When an employer is excavating a trench to install a new storm drain, subpart P applies to all excavation and trenching activities. The final confined spaces standard applies, however, to non-excavation work within a confined space located in an excavation, as this work would expose employees to additional hazards besides excavation-related hazards. For example, this final standard covers entry into a prefabricated storm drain, other pipe, or manhole even if located at the bottom of an open excavation.

Subpart S applies to the construction of underground tunnels, shafts, chambers, and passageways and cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of the subpart, and covered in such a manner as to create conditions characteristic of underground construction (§ 1926.800(a)(1)). For subpart S to apply, ''the tunnel or other underground structure must be under 'construction.' '' See October 1, 2010, letter #20061017–7300. For example, the construction of an underground structure by boring a tunnel through soil and providing the concrete or metal supports necessary to preserve the opening is subject to subpart S, as are structural modifications such as upgrading a

tunnel wall to construct a new structure following a collapse.[3] OSHA developed subpart S to protect employees from the hazards associated with the construction of underground structures, and OSHA concludes that the subpart S standard provides more appropriate protections in these situations than this final confined spaces standard.

In the context of underground work, this final standard applies mainly to construction activities inside an existing underground confined space, as opposed to the initial construction of that underground space.[4] Examples of activities covered by this confined spaces standard include: installing a structure within an existing tunnel, working inside a large pipe or vault located within an existing sewer tunnel, laying a new cable inside an existing sewer tunnel, upgrading a grate in an existing sewer system, installing a new lining in a sewer pipe, adding tile or grout or other sealant to an existing concrete tunnel, or attaching equipment to the walls of an existing tunnel.[5] OSHA recognizes that, in large underground construction projects, the distinction between an existing portion of a tunnel and the construction of a new tunnel might not be clear when the same employees are working to construct a tunnel, or employees add equipment or structures to tunnel walls at the same time they are digging the tunnel. To avoid requirements that could potentially cause confusion and extra burdens by forcing employers to switch back and forth between different standards during the same general tunnel-construction project, OSHA will treat non-structural work performed in conjunction with initial construction of an underground space as covered by subpart S. For example, if employees install a cable as part of the initial sewer tunnel-construction project, subpart S would cover both the employees engaged in tunnel construction and those engaged in cable installation. Otherwise, the result would be different employees working on the same construction project in the same space, but under different standards with significantly different requirements.

One commenter representing homebuilders asserted that house foundations and basement excavations become ''trenches'' when contractors construct formwork, foundations, or walls, and, therefore, subpart P, rather than the final confined spaces standard, should cover these work areas (ID–117, pp. 6 and 7). According to the commenter, OSHA should not consider this type of work area a confined space because it is subject to natural ventilation. Whether a work area is subject to natural ventilation is not dispositive in determining whether the area meets the definition of a confined space in final § 1926.1202. However, if the work is ''excavation'' work or ''trench'' work under subpart P, then this final rule would not apply. OSHA agrees that subpart P, and not this confined spaces standard, would apply to the construction of most house foundations in an excavated area until the contractor backfills the area adjacent to the foundation or otherwise covers the foundation or the other areas. However, depending on the particular circumstances at the worksite, once the backfill or other covering occurs, the area inside the foundation space could be a confined space subject to this final rule if it meets all of the criteria in the definition of a confined space in § 1926.1201.

Other Requests for Exemptions

1. Home Construction

One commenter requested that OSHA exempt the following areas from coverage under this standard: attics, crawl spaces, basements, cabinets, and ''similar areas in home building'' (ID–117, pp. 6 and 7). The commenter's rationale for these exemptions was that these spaces ''do not contain hazardous atmospheres or engulfment hazards'' (*id*). The commenter did not provide any basis for the assertion that these areas are inherently free of the identified hazards, and OSHA does not agree that these spaces are always inherently free from such hazards. Hazardous gases or other substances may occur in almost any confined space. For example, one employee may store or apply an epoxy or other chemical in a crawl space, which could expose that employee or a subsequent entrant to a hazardous atmosphere. A different commenter noted that surface coatings such as paints and epoxies are seemingly stable, and, while generally undetectable through air monitoring once applied and dried, could result in significant safety and health hazards to employees who are welding or involved in other hot work in a confined space (ID–213.1, pp. 6 and 7).

Moreover, hazardous atmospheres and engulfment hazards are only two types of hazards that could cause death or serious injury to employees in a confined space. The commenter requesting the exemption did not provide any indication that the spaces would be free of physical hazards that could trap, kill, or seriously injure the employees. In fact, the final economic analysis for this rule cites several fatalities that resulted from exposure to physical hazards (generally electrical) in crawlspaces under homes. Therefore, a categorical exemption for these types of spaces is inappropriate, and would be inconsistent with the purpose of the standard.

However, while a categorical exemption is not appropriate, OSHA anticipates that, in new construction, employers may be able to organize work practices to avoid placing workers in areas that meet the definition of a confined space (for example, complete work in what will eventually become a crawl space before constructing the overhead portion of the crawl space, apply insulation to an attic floor before the underlying ceiling below it is installed, complete basement work before the overhead structure is installed or after stairways are in place). Furthermore, if the commenter is correct that the majority of the spaces it identified do not contain a hazardous atmosphere or other hazards, then the employer would have only a limited duty under this standard because a permit program would not be necessary if the spaces do not contain such hazards. Accordingly, employers would only need to identify the spaces and ensure that the confined spaces remain free of hazards.

2. 29 CFR Part 1926, Subpart V Work

Commenters representing the electric utilities asserted that OSHA should not

[3] OSHA previously determined that the underground construction requirements in subpart S also apply to tunnels placed underwater. See August 8, 2002, memorandum to K. Frank Gravitt. This new confined spaces standard does not affect that previous determination. However, this confined spaces standard does cover construction work that occurs inside an underwater tunnel following the initial construction of that tunnel.

[4] Note that the distinctions discussed here are solely for the purposes of determining which construction standard applies. This discussion does not impact OSHA's analysis of whether an activity constitutes construction work as opposed to maintenance work.

[5] OSHA notes that in a 1991 memorandum the Agency applied subpart S to the ''rehabilitation'' of a sewer tunnel originally completed in 1932. January 21, 1991, memorandum to Michael Connors. OSHA issued the memorandum before it issued either this standard or the general industry standard for confined spaces, and, thus, before it had reason to consider potential overlap between a confined spaces standard and other construction standards, or could point to any other employee protections. Depending on the extent of the ''rehabilitation'' and the activities involved, the new confined spaces standard may apply instead to such projects in the future. For example, subpart S would cover the ''rehabilitation'' of an existing tunnel that involves expansion of the existing sewer or an improvement of a collapsed wall. However, this final confined spaces standard would cover ''rehabilitation'' that consists of adding sealant to the existing tunnel structure, or attaching equipment or new materials to the tunnel walls. To the extent that the 1991 memorandum requires a different result, this final standard supersedes it.

require employers engaged in 29 CFR part 1926, subpart V work to follow two different confined spaces standards (ID–112, pp. 3 and 4; –134, p. 2; –210, Tr. pp. 106–108, 142). These commenters stated that general industry electric-utility work practices are similar to construction electric-utility work practices. OSHA addresses the commenters' preference to have identical confined-space provisions applicable to both general industry and construction earlier in this preamble where the Agency explains why it chose to adopt a modified version of the general industry standard as the confined spaces in construction final rule. As discussed there, OSHA will also treat compliance with this new rule as compliance with the general industry confined spaces rule when one or more employers are engaged in both general industry work and construction work at the same time in the same space.

To the extent that the commenters were requesting that OSHA exempt all subpart V work from all of the new confined-space requirements in final subpart AA, OSHA declines to do so. First, the general industry standard includes no such broad exemption, and the record does not indicate why electric-utility industry work in confined spaces is less hazardous or otherwise less suitable for coverage by a confined spaces standard than the work of any other industry. The general industry electric power generation, transmission, and distribution rule, § 1910.269, does not exempt that industry from the general industry confined-space requirements at § 1910.146: to the contrary, the ''enclosed spaces'' provision in § 1910.269(e) expressly requires employers to comply with the requirements in § 1910.146 when the enclosed-space entry will not be routine in nature or the space contains a hazardous atmosphere that cannot be controlled through the steps specified in § 1910.269(e).

As explained earlier in this preamble, OSHA anticipated in its recent amendments to the corresponding construction rule, 29 CFR part 1926, subpart V—Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment, that the confined spaces in construction standard would provide the parallel integral protections to employers engaged in construction work that involves conducting non-routine entries into enclosed spaces, or where the enclosed spaces contain hazards that are not controlled by the enclosed spaces requirement (see § 1926.953(a) and its explanation at 79 FR 20375–20376).). OSHA explained that the enclosed spaces provisions in § 1926.953(a) are only intended to address routine entries with a limited type of hazard, while the general industry confined spaces standard (which the Agency noted it intended replace with the construction version in this final rule) applies to all other entries into enclosed spaces. The confined space standard ''ensures that employees working in enclosed spaces will be afforded protection in circumstances in which the Subpart V provisions are insufficiently protective'' (79 FR 20376). If OSHA exempts employers engaged in subpart V work from the confined spaces standard, it would be creating a regulatory gap that is not present in the general industry context.

The commenter asserted that electric utility work in ''power generation facilities and other electric utility installations'' is sufficiently similar that OSHA has previously acknowledged it should be regulated in the same manner, regardless of whether the employer is engaged in construction or general industry activity (ID–112.1, p. 4–5). To the extent that this commenter is requesting greater consistency between the construction rule and the general industry rule, OSHA has provided that in this final rule. To the extent that this commenter is requesting an exemption from the construction standard so that it could comply instead with the general industry standard, OSHA disagrees because such an approach would result in a regulatory gap. Section 1910.146 is a general industry standard that, by its own terms, could not apply to construction activities beyond the scope of the previous § 1926.953 incorporation, but that incorporation of § 1910.146 was limited: it only applied to routine entries into enclosed spaces. Not all enclosed spaces are permit-required confined spaces and not all entries are routine. Further, while in general industry, ''routine'' entries for maintenance work covers a relatively broad range of activities, in the context of construction work a ''routine'' entry would be much narrower. In practice, a complete exemption from the new construction rule for confined spaces would leave many subpart V workers completely unprotected from the hazards in many confined spaces.

Paragraph (c)—Other Standards. This final rule replaces the confined spaces training requirement previously specified in § 1926.21(b), but does not replace any other construction standards. Rather, OSHA developed this final rule to work in conjunction with other construction standards to provide additional protections needed to address hazards that may arise when employees are working in or near a confined space. No requirement in this confined spaces final rule supplants or diminishes employer duties imposed by any other OSHA standard, and the Agency included § 1926.1201(c) in this final standard to emphasize that point. When both the scope of final § 1926.1201 and the provisions in another OSHA construction standard related to confined-space hazards cover an activity, OSHA requires employers to comply with both provisions (§ 1926.1201(c)). For example, while 29 CFR part 1926, subpart D—Occupational Health and Environmental Controls contains requirements for ventilation when working in potentially hazardous atmospheric conditions, it does not address other equipment or workplace conditions covered by this final rule. Therefore, where a potential hazardous atmosphere exists and this final confined spaces rule requires ventilation to control that hazard, the employer must ventilate in accordance with § 1926.57. However, the remaining provisions of this confined spaces rule will still apply: for example, if the situation requires rescue, the employer must provide rescue in accordance with this final rule.

In the preamble to the proposal, OSHA also discussed the overlap of the confined-spaces standard with its construction welding standard in subpart J of 29 CFR part 1926. The Agency explained that both standards would apply, noting for example that subpart J sets criteria for the use of a lifeline system in the confined space, but does not set criteria for the use of rescue services or provide the same level of procedures and controls for permit-required confined spaces (72 FR 67356 (Nov. 28, 2007)). OSHA designed the welding standard to protect employees solely from the hazards of welding, which include metal fume, gases, and smoke hazards associated with the welding process, physical hazards from the welding device or contact with the hot welding surface, potential explosion of the gas tanks, and hazards from working with specific materials. The confined-spaces standard, however, addresses a wider range of hazards than the welding standard, and OSHA considers the confined-spaces standard more detailed and comprehensive than the welding standard in its protection of employees from those other hazards for purposes of 29 CFR 1910.5(c).[6] Although the

[6] The OSHA regulation addressing the overlap of different standards is in 29 CFR 1910.5. Paragraph

Continued

welding standard has a section designed to address the hazards of welding in a confined space, the Agency is applying the provisions of the confined-spaces standard to all other hazards associated with confined-spaces work to the extent these provisions of the confined-spaces standard do not conflict with employee protections in subpart J. Therefore, as OSHA explained in the proposal, the rescue service and entry procedures must meet the requirements of this confined-spaces standard, while the employer must use a lifeline system as required to meet the criteria in subpart J. Specifically, employers must comply with the requirements of § 1926.1203(c) to prevent unauthorized entry, and the subpart AA requirements to implement a permit program (including posting a permit) to provide for entry in accordance with §§ 1926.1203(d), 1926.1204, 1926.1205, and 1926.1206. Employers must comply with the ventilation requirements in § 1926.353(a) of subpart J to address atmospheric hazards produced by welding fumes, but employers also must comply with § 1926.1204(c), which requires ventilation as necessary to control any atmospheric hazards beyond those generated by welding because the welding standard does not address those hazards. Employers also must comply with the identification, assessment, and information-exchange and coordination requirements in § 1926.1203(a), (b), and (h), and the relevant training required by § 1926.1207. Employers must develop a rescue plan in accordance with § 1926.353(b)(3) of subpart J, but also must assess and select a rescue service in accordance with §§ 1926.1204(i) and 1926.1211(a) and (c), and equip and train its in-house rescue services pursuant to § 1926.1211(a) and (b). Finally, employers must comply with additional confined-spaces requirements not addressed in the welding standard, such as the requirement to make Safety Data Sheets available to the medical facility treating any entrant exposed to hazardous substance (§ 1926.1211(d)), and the employee-participation requirements in § 1926.1212.

Subpart D—Occupational Health and Environmental Controls, at § 1926.64(f)(4) and (j), discussed above, and in subpart V—Power Distribution and Transmission, at § 1926.950(a), provide other examples of potential overlap with existing standards. In general, the final confined-spaces standard applies to hazards not addressed by subpart V. Subpart V generally protects employees from electrical hazards but does not necessarily address a hazardous atmosphere or other physical hazards in the confined space; the requirements of the confined-spaces standard address those hazards, and employers must comply with these requirements during confined-spaces operations. For example, in § 1926.953 of subpart V OSHA specifically addresses the overlap between the ''enclosed spaces'' requirements of subpart V and the confined spaces standard, mandating compliance with the confined-spaces requirements when hazards remain even after an employer has complied with all of the measures described in subpart V.

Language in proposed § 1926.1202(d) not included—Statement on other duties of controlling contractors. Proposed § 1926.1202(d) contained a statement that the information-sharing requirements in the rule do not limit a controlling contractor's responsibilities under any other provisions of the rule or the OSH Act, including those responsibilities described in OSHA Directive CPL 02–00–124: Multi-Employer Citation Policy (Dec. 10, 1999). The proposed rule text listed several specific examples of controlling contractor duties.

OSHA is not including that statement or any equivalent statement in the final rule for several reasons. First, such a statement is unnecessary because it is only a reminder that OSHA has a wide variety of health and safety standards that could apply to various activities of controlling contractors and host employers, depending on their activities and responsibilities. OSHA does not typically include such a reminder in the regulatory text of its standards. For example, OSHA does not include a similar statement in the general industry confined spaces standard even though that standard includes specific duties for host employers, and the host employers could also have additional duties under other standards or if they qualify as controlling employers or exposing employers under OSHA's multi-employer citation policy.

Second, OSHA is concerned that the regulated community will view the inclusion of such a statement in this standard as implying that standards without the same statement preempt other potentially applicable standards or policies. OSHA did not intend such an implication, and it does not have the time or resources to revise all of its standards to include this statement.

Third, several commenters found fault with the statement in the proposed rule. One commenter noted the statement was incomplete because it addressed controlling contractors, not host employers (ID–117, p. 19). Another commenter implied that the statement would not be helpful unless it listed all of the other potential duties to which controlling contractors could be subject (ID–211, Tr. p. 76).

1926.1202—Definitions

Final rule § 1926.1202 provides definitions for key words used to describe the requirements of this final rule. OSHA adopted most of the definitions from its general industry confined spaces standard (29 CFR 1910.146); most definitions also are generally consistent with the voluntary consensus standard on confined spaces, ANSI Z117.1–2003. Unless otherwise noted, these definitions are applicable only to this confined spaces in construction standard; OSHA added an introductory statement to that effect in § 1926.1202 of the final rule. OSHA took many of the definitions of the terms used in final rule § 1926.1202 from other OSHA construction standards; the Agency included these definitions in this final rule to minimize the need to reference those other standards.

Several commenters objected that some of the definitions of terms used in the proposed confined spaces in construction standard were different than the definitions for identical terms in the general industry confined spaces standard at § 1910.146(b) (ID–086, p. 3; –112, p. 7; –147, pp. 2–3). For the reasons set forth in section II.B (History) of this preamble, in the final rule OSHA revised many of these definitions so that the terms are consistent with the general industry terms defined at § 1910.146(b): *entry, entry supervisor, hazardous atmosphere, immediately dangerous to life and health, permit-required confined space, rescue service, retrieval system,* and *testing.*

In addition, OSHA included some terms in the Definitions section of this final rule not defined in the proposed rule, but defined in the general industry confined spaces standard at

(c)(1) of that regulation states that if a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process. Paragraph (c)(2), however, provides that any standard shall apply according to its terms even though particular standards are also prescribed for the industry to the extent that none of such particular standards applies. The Agency interprets this regulation in this context to mean that the welding standard is the more specific standard addressing welding hazards and, therefore, applies to welding activities even when conducted in confined spaces; however, several provisions of the confined-spaces standard apply to confined-space hazards not addressed by the welding standard (see examples later in this paragraph), and employers must comply with these provisions when their employees are exposed to these hazards during confined-space operations.

§ 1910.146(b), including: *acceptable entry conditions, hot work, inerting, line-breaking, non-permit confined space,* and *prohibited condition.* Again, for the reasons explained in preamble section II.B (History), OSHA made definitions of these terms in this final rule consistent with § 1910.146(b). In general, OSHA defined the terms identically to the general industry standard or revised the definition slightly to make grammatical improvements or to clarify the meaning of the term. When OSHA deviated substantively in the final definition from the term as defined in § 1910.146(b), the Agency explains its reasons for doing so in the individual preamble paragraph addressing that definition.

One commenter urged OSHA to define certain terms exactly as ANSI Z–117.1–.2003 defines the terms (ID–086, p. 3). The Agency does not agree that such an approach is appropriate. The commenter did not explain why the definitions as proposed were inappropriate, how the change would improve safety, or why the consensus standard was preferable to the longstanding definitions in the general industry standard that most commenters supported. OSHA selected the definitions in this final rule specifically for the activities and equipment covered by this final rule and, to the extent possible, to be consistent with the definitions in § 1910.146(b) so as to reduce confusion among the regulated community and facilitate compliance. In many cases, the ANSI standards were not as clear or comprehensive as the final language, and therefore less preferable for a mandatory and legally enforceable standard.

Some commenters also noted that OSHA proposed definitions for many terms not defined in § 1910.146(b) (ID–112, p. 9; –147, pp. 2–3). These commenters did not, however, specifically object to these definitions, identify errors, suggest improvements, or otherwise give a reason why OSHA should not include these definitions in the final rule. In this regard, the final standard uses some terms, such as *early warning system* and *controlling contractor,* not used in the general industry confined spaces standard. The general industry confined spaces standard uses other terms not defined in § 1910.146(b). In general, for definitions in either of these categories, OSHA made the definition in this final rule identical to the definition in the proposed rule. When the Agency includes in the final rule a definition that does not have a parallel definition in the general industry standard, and when the Agency revises a definition from the proposed definition, it explains the reasons for its decision below in the discussion accompanying that definition.

OSHA also decided not to include several of the proposed definitions, such as definitions of *contractor, controlled atmosphere confined space,* and *isolated hazard confined space* in this final rule because OSHA did not use these terms in this final rule. In addition, the final rule does not include a definition of ''protect'' or ''protection'' because the Agency believes these terms, as used in this final rule, are sufficiently clear from their ordinary use. The general industry standard uses these terms without definition. In addition, the general industry standard does not include a definition of ''control,'' but OSHA is including a definition of this term in this final rule to clarify that ventilation and other atmospheric controls provide some level of worker protection, even if such measure are not fully protective.

OSHA believes that the construction industry readily understands most of the defined terms in the final rule because these terms are self-explanatory or are consistent with the definitions used in § 1910.146 and ANSI 117.1–2003. Nevertheless, OSHA includes an expanded discussion for several of the defined terms, and, when necessary, explains differences between the definition in the final rule and the definitions contained in either the proposed rule or § 1910.146(b). The Agency also addresses comments on terminology received during the SBREFA process and the public comment period, including comments made through testimony during the public hearing.

1. Defined Terms

Acceptable entry conditions means the conditions that must exist in a permit space, before an employee may enter that space, to ensure that employees can safely enter into, and safely work within, the space. The definition differs slightly from the definition of the term in § 1910.146(b). OSHA added ''before an employee may enter that space'' to clarify that employers are to measure and determine ''acceptable entry conditions'' before entry. Once entry occurs, the employer must continue to monitor the permit space and terminate the entry if a prohibited condition (*i.e.,* a condition that is not an ''acceptable entry condition'') arises. (See the discussion of final § 1926.1204(c)(1) for an explanation of how an employer must consider the work it will perform inside a confined space when identifying ''acceptable entry conditions.'') In the NPRM, OSHA defined ''planned condition'' in a similar manner. In the final rule, OSHA uses and defines the term in the same manner as the general industry standard to provide consistency between the two standards.

Attendant means an individual stationed outside one or more permit spaces who assesses the status of authorized entrants and who must perform the duties specified in § 1926.1209—Duties of Attendants. The general industry definition of ''attendant'' refers to an attendant who performs ''all attendant duties assigned. . ..'' In the final construction rule, the attendant's duties are specified in § 1926.1209—Duties of Attendants. OSHA refers to an attendant's responsibility to ''assess,'' rather than ''monitor'' as in the general industry standard, because ''monitor'' is a term of art in the new standard (but not under the general industry standard). However, there is no substantive difference from the definition in the general industry standard.

Authorized entrant means an employee who is authorized by the entry supervisor to enter a permit space. The general industry rule defines ''authorized entrant'' based on who the *employer* authorizes to enter the permit space. OSHA shifted the focus to who the *entry supervisor* authorizes to enter the space to avoid confusion about who the authorizing employer is on a multi-employer worksite. This revision clarifies that an entry supervisor has the duty to identify the authorized entrants on the entry permit, regardless of whether or not they are employees of another employer.

Barrier means a physical obstruction that blocks or limits access. One commenter suggested that OSHA place a note under the definition of ''barrier'' explaining that a barrier does not block or limit egress (ID–025, p. 2). This revision is unnecessary because there are provisions in the final rule that require employers to provide unobstructed egress when employees are inside a confined space. For example, final rule § 1926.1204(d)(7) requires an employer to provide equipment needed for safe egress from a Permit-Required Confined Space (''PRCS'' or ''permit space''), and final rule § 1926.1208(e) requires the authorized entrant to exit a PRCS as quickly as possible under certain circumstances. Therefore, an employer would be in violation of this final rule when a barrier that prohibits or limits persons from entering a PRCS from outside the space also prohibits or limits

egress for authorized entrants seeking to exit the permit space, even though the definition of ''barrier'' does not address egress explicitly. Locking a bolt on a door that is the only means of egress from a permit space, for example, could constitute a prohibited barrier that would interfere with egress from the permit space.

Blanking or blinding means the absolute closure of a pipe, line, or duct by fastening a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore, and that is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate. OSHA took this definition directly from § 1910.146, and uses this term the same way in this final rule as in the general industry standard.

Competent person means a person capable of identifying existing and predictable hazardous conditions, and who has the authority to address them promptly. Section 1926.1203 of the proposed rule did not use or define ''competent person,'' but required the employer to identify and assess confined spaces. Several commenters suggested that OSHA clarify that a competent person make these determinations, and to include in the final rule the same definition for ''competent person'' as the one contained in other OSHA construction standards (ID–025, p. 2; –028, p. 4; –095, p. 2; –124, p. 7; –150, p. 3). OSHA agrees with these commenters and, therefore, added its customary definition to the final rule. OSHA uses this well-known definition in several of its construction standards. See, *e.g.,* §§ 1926.32(f), 1926.450(b), 1926.650(b), 1926.751, and 1926.1401; see also the discussion of final § 1926.1203(a) for a further explanation of why OSHA included a competent person requirement in this final rule.

Confined space means a space that: (1) Is large enough and so configured that an employee can bodily enter it; (2) has limited or restricted means for entry and exit; and (3) is not designed for continuous employee occupancy. OSHA based the definition of ''confined space'' on the definition of ''confined space'' in the general industry confined spaces standard at § 1910.146(b). It describes a space where three elements exist. First, the configuration of the space is such that a person can enter into it with his/her entire body (although the ''entry'' occurs as soon as any part of the body crosses into the confined space).[7] Second, there is limited or restricted entry or exit from the space. Third, the space is not designed for continuous employee occupancy.

OSHA is not including in the definition of ''confined space'' in the final rule the requirement that employees be able to ''perform assigned work,'' which it included in the general industry definition in § 1910.146(b). OSHA did not include this phrase in this final standard because it was superfluous, and to avoid arguments that it added ambiguity. Some in the regulated community might attempt to interpret the phrase incorrectly to suggest that this final standard, and the majority of the protections provided by the standard, would not apply if the entrant did not have an assignment to perform on entering the space, or if the employee was unable to perform work inside the space. Therefore, this final rule addresses confined spaces in terms of the hazards present, rather than the purpose for entering the space. By removing the unnecessary language from the proposed definition of ''confined space,'' OSHA makes it clear that this final standard covers any entry into a confined space. This does not imply that ''performed assigned work'' has a substantive meaning in the general industry standard; OSHA is simply taking the opportunity to improve the language of the definition as it proposed. OSHA did not include the ''perform assigned work'' language in the proposed definition of ''confined space'' adopted in this final rule, and received no comment on the absence of that language.

The final definition also includes an additional change from the general industry standard. The definition of ''confined space'' in § 1910.146(b) contains examples of different types of confined spaces in a parenthetical to the second part of the definition. OSHA did not include this parenthetical in this final rule to avoid confusing these examples with a note to § 1926.1201(a) that provides a more comprehensive, but not exclusive, list of examples of confined spaces.

One commenter asserted that the proposed definition of a confined space is too broad because it includes attics, crawlspaces, cabinets, unfinished basements, swimming pools, window wells or utility closets that contain water heaters in single-family residential homes, but those spaces ''do not present the kind of risk the standard is intended to address.'' (ID–117, p. 5). Although some of these spaces could meet the definition of a confined space, the Agency does not agree that this definition is too broad. As noted earlier when OSHA rejected the same commenter's request for a complete exemption from the standard, the commenter provides no support for the assertion that these spaces do not present the kind of risks this standard is addressed and the crawl-space fatalities included in the final economic analysis clearly demonstrate that these spaces are not inherently safe. OSHA defined the term broadly to ensure that employers perform the requisite evaluation to determine whether a known or potential hazard exists in those spaces. The majority of the requirements of this final rule would apply only if a known or potential hazard is found to exist in the confined space, but the initial assessment required by this standard is crucial to discovering whether such hazards are present. Therefore, an employer performing construction work inside attics or any of the other spaces noted by this commenter must comply with only the reevaluation provisions in this final rule when no atmospheric or physical hazard exists in a confined space. If an employer does not wish to conduct an evaluation, then the employer can either prevent its employees from entering the space or design the construction process to avoid the need for entry into a confined space.

One commenter expressed confusion as to the meaning of the third element of the confined space definition: ''not designed for continuous employee occupancy'' (ID–119, p. 5). The third element captures all spaces where conditions are such that employees would normally exit the space relatively soon after entering, absent the construction activity. When determining whether a space is designed for continuous occupancy, it is appropriate to focus on the design of the space and whether that space is still configured as designed. See October 22, 1993, letter to Robert Bee; December 20, 1994, letter to Edward Donoghue; June 22, 1995, letter to Dan Freeman (noting difference between the ''primary function'' and ''design'' of a confined space). For example, if a space that meets the definition of a confined space has a powered ventilation system that allows for continuous occupancy, but that system is not functional or the construction activity would interfere with the proper function of that system, then the space would be a confined space subject to this final standard. See

[7] See March 5, 2008, letter to Andrew Lewis (no confined space where it is impossible for employee to fit his entire body into the space); October 18, 1995, letter to Charles M. Bessey (entry occurs when any part of the body breaks the plane of the opening of a space large enough to allow full entry, regardless of intent to fully enter).

October 27, 1995, letter to William Taylor.

The same commenter also asked for additional examples of confined spaces (ID–119, p. 5). The note in final rule § 1926.1201(a) provides examples of locations where confined spaces may occur. In addition, OSHA notes that numerous letters of interpretation are available providing additional guidance as to the meaning of a ''confined space'' in the context of the general industry standard. OSHA is adopting into its construction rule the guidance regarding the definition of a confined space provided by the letters of interpretation referenced in the previous paragraph. In addition, the following letters apply with respect to the definition of a confined space in this final standard as they did to the general industry standard: September 19, 1994, letter to Edward Donoghue Associates, Inc. (elevator pit can be a confined space); June 15, 1992, letter to George Kennedy (storm sewer manhole entrance can be a confined space); July 11, 1995, letter to Alan Sefton (entry by a robot does not trigger the standard); October 23, 1995, letter to Mark Arriens (roll off container, dump truck bed, and truck trailer can be confined spaces); October 27, 1995, letter to James Sharpe (entry limited if employee must bend down to avoid striking the top of an opening or step over a raised threshold); February 8, 1996, letter to Remi Morrissette (personnel airlock can be a confined space when both sets of doors cannot open at the same time); April 24, 1998, letter to Gregory Faeth (30-inch deep chest-type freezer not a confined space when person can simply stand up to get out); December 2, 2002, letter to Art Varga (dock leveler pit can be a confined space); March 8, 2005, letter to Ron Sands (box van of truck is not a confined space as normally used and configured). The Agency notes, however, that any guidance previously provided with respect to its previous confined spaces in construction standard, 29 CFR 1926.21, is no longer applicable or in effect. See, *e.g.,* July 10, 2006, letter to John Williams II.

One commenter requested that OSHA clarify the distinction between an ''enclosed space'' and a ''confined space,'' and another commenter suggested that OSHA provide additional discussion of the hazards of an ''enclosed space'' in this final rule (ID–119, p. 6; –140, p. 4). As OSHA stated in the preamble to the proposed rule, the Small Business Advocacy Review Panel recommended that OSHA examine the benefits and costs associated with provisions addressing hazardous-enclosed spaces (72 FR 67398 (Nov. 28, 2007)). Consequently, the Agency decided not to include any new or additional requirements for hazardous-enclosed spaces in the final rule. Instead, OSHA relies on existing standards, such as § 1926.55—Gases, vapors, fumes, dusts, and mists, to address the hazards of working inside enclosed spaces. OSHA Technical Information Bulletin 02–05–30 is available to employers who are looking for guidance on the particular hazards of working in enclosed spaces. For example, this bulletin states that the OSHA respirator standard may apply when employees are working in enclosures that do not meet the definition of ''confined space.''

Another commenter questioned the inclusion of spaces equipped with ladders or stairways for employee entry or exit in the proposed definition of ''confined space'' (ID–013, p. 5). Both the proposed and final definitions of ''confined space'' include ''limited or restricted'' entry or exit. A space where an employee can enter or exit only with the use of a stairway or a ladder, like an attic, generally meets this definition of a confined space. See, *e.g.,* October 27, 1995, letter to James Sharpe. The following guidance provided earlier by OSHA with respect to the general industry standard definition of this term also is applicable to this construction standard:

> Ladders, and temporary, movable, spiral, or articulated stairs will usually be considered a limited or restricted means of egress. Fixed industrial stairs that meet OSHA standards will be considered a limited or restricted means of egress when the conditions or physical characteristics of the space, in light of the hazards present in it, would interfere with the entrant's ability to exit or be rescued in a hazardous situation.
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> OSHA Directive CPL 02–00–100: Application of the Permit-Required Confined Spaces (PRCS) Standards, 29 CFR 1910.146 (May 5, 1995), Appendix E.

OSHA also clarified in the context of the general industry confined spaces standard that, although the Agency does not generally consider doorways and other portals through which a person can walk to be limited means of entry or exit, it may deem a space containing such a door or portal to be a confined space if the door or portal hinders an entrant's ability to escape from the confined space in an emergency (see 59 FR 55208 (Nov. 4, 1994)). The same interpretation applies in the construction context. OSHA provided the following explanation in its compliance directive on the general industry rule, which also applies in the construction context:

> A space has limited or restricted means of entry or exit if an entrant's ability to escape in an emergency would be hindered. The dimensions of a door and its location are factors in determining whether an entrant can easily escape; however, the presence of a door does not in and of itself mean that the space is not a confined space. For example, a space such as a bag house or crawl space that has a door leading into it, but also has pipes, conduits, ducts, or equipment or materials that an employee would be required to crawl over or under or squeeze around in order to escape, has limited or restricted means of exit. A piece of equipment with an access door, such as a conveyor feed, a drying oven, or a paint spray enclosure, will also be considered to have restricted means of entry or exit if an employee has to crawl to gain access to his or her intended work location. Similarly, an access door or portal which is too small to allow an employee to walk upright and unimpeded through it will be considered to restrict an employee's ability to escape.
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> OSHA Directive CPL 02–00–100: Application of the Permit-Required Confined Spaces (PRCS) Standards, 29 CFR 1910.146 (May 5, 1995), Appendix E.

Another commenter asked OSHA to clarify whether a space that is temporary can still meet the definition of a confined space in the final rule (ID–136, p. 2). For example, the commenter asserted that a space constructed for the sole purpose of allowing employees to temporarily work over the end of a large open gas pipe could qualify as a confined space. In this particular example, the commenter emphasized the need for an employer to address the hazard of establishing an oxygen-deficient atmosphere as a result of purging the pipe with nitrogen.

OSHA agrees that a temporary space, including the temporary space provided in the commenter's example, can be a ''confined space.'' The fact that the space described by the commenter is temporary does not prevent the space from meeting the definition of a confined space in this final rule. The temporary character of the space may be the most readily apparent factor in determining whether a temporary space would permit continuous employee occupancy.

OHSA did not define the term ''contractor'' in the final rule, as it did in the proposed rule. One commenter recognized that OSHA's proposed definition of ''contractor'' excluded controlling contractors (ID–099, p. 1). To simplify the terminology used throughout the standard, to address the inconsistency identified by the commenter, and to avoid other confusion with the term ''controlling contractor,'' OSHA is using terms more precisely in the final rule. OSHA uses

the term ''employer'' to refer generically to employers, including employers that meet the final rule's definitions of ''controlling contractor'' or ''host employers.'' OSHA also added the term ''entry employer'' to refer to employers performing confined-space entry. As discussed elsewhere in this preamble the Agency also is using ''controlling contractor'' and ''host employer'' to refer to other specific types of employers when necessary.

Control, as defined in this final standard, is an action taken, through engineering methods, to reduce the hazard level inside a confined space, including the maintenance of this reduced hazard level. This definition is consistent with the use of the term in the general industry confined spaces standard, although OSHA did not define the term in § 1910.146(b). The proposed rule's definition of ''control'' provided isolation as an example of a control action. However, controlling a hazard provides less protection to an employee than isolating the hazard because it does not result in the elimination or removal of the hazard. For example, ventilation is a control method that merely reduces the hazard level below its Permissible Exposure Limit (PEL) or Lower Explosive Limit (LEL) for the duration needed to protect employees in or near a confined space. Therefore, OSHA deleted the reference to isolation from the final standard to clarify the distinction between control and isolation. Otherwise, the final standard defines the term as proposed.

Controlling contractor is the employer that has overall responsibility for construction at the worksite. In addition, the note to this definition explains that, if a host employer has overall responsibility for construction at the worksite, then the host employer also is the controlling contractor under this final rule. The final rule's definition of ''controlling contractor'' is identical to the proposed rule's definition. The general industry confined spaces standard does not use the term ''controlling contractor'' and, therefore, § 1910.146(b) does not define the term.

OSHA included a definition of ''controlling contractor'' in this final rule because it is a common practice in construction work for a number of employers to be working at a construction site at the same time. Also, there often is one employer that has overall authority over the construction site, including the authority to change worksite conditions, set schedules, and alter work practices with regard to safety. This definition is nearly identical to the definition of the term as used in the OSHA's Steel Erection standard at 29 CFR part 1926, subpart R. The definition reflects the core principle of general supervisory control over the construction site. Under this final rule, OSHA clarified the responsibilities of different employers on the site and assigned specific duties to the controlling contractor, as distinguished from the host employer and the other employers (see final § 1926.1203(h)). Consequently, there is a need to define the term ''controlling contractor.''

Some commenters were unsure whether an employer with no contractual authority for the overall safety of a project could qualify as a ''controlling contractor'' (ID–106, p. 2; –129, p. 2). Another commenter asserted that an employer will have extreme difficulty exercising the control required by the standard without explicit contractual authority to do so (ID–120, p. 2). The facts and circumstances present at the job site determine whether an employer is a controlling contractor under this final rule: explicit contractual authority is sufficient to indicate a controlling contractor, but the absence of contractual authority is not definitive. In this regard, OSHA intends the controlling contractor's authority to be established in the same manner that a controlling employer's authority is established under OSHA's Multi-Employer Citation Policy. For more information about the role of the controlling employer, see OSHA Directive CPL 02–00–124: Multi-Employer Citation Policy.

Double block and bleed means the closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves. This can be done to eliminate the potential for substances in the sections of the pipes to enter the space. OSHA took this term directly from § 1910.146. The proposed definition was different grammatically, and also specified the exact position in which the closures were to be locked or tagged, but there is no substantive difference between the final language and the language in the proposed rule.

Early-warning system is the method used to alert attendants, as well as authorized entrants in a permit space, that an engulfment hazard may be developing. Examples of early-warning systems include: alarms activated by remote sensors and lookouts with equipment for immediately communicating with the authorized entrants and attendants. OSHA did not revise the definition from the proposed rule, other than to use ''assess'' rather than ''monitor'' because the latter is now a defined term under the standard. Although § 1910.146 does not explicitly include the ''early warning system'', the Agency included the term in the final rule to ensure that the regulated community understands that these systems must provide an effective means of warning attendants and authorized entrants that a non-isolated engulfment hazard may be developing in an area where it could flow into the work area. A clear understanding of this term will help employers ensure that authorized entrants have sufficient time to safely exit the space (see explanation of § 1926.1204(e)(1) below in this preamble). As illustrated by the non-exhaustive list of examples of early-warning systems in this definition, employers have flexibility regarding the type of early-warning system to use for continuously monitoring engulfment hazards. However, as stated in final rule § 1926.1204(e)(1)(iii), whatever warning system an employer selects, it must alert authorized entrants and attendants in sufficient time for the authorized entrants to safely exit the space.

Emergency means any occurrence inside or outside a space that could endanger an entrant. The definition is similar to the definition in the general industry standard, and is not substantively different from the definition provided in the proposed rule. The only distinction between the general industry standard and the final rule is that the final rule includes a loss of power in the non-exhaustive list of examples of emergencies. OSHA is specifying power loss to make it clear that unexpected loss of power can endanger entrants, particularly if the permit plan relied on the use of ventilation, monitoring, controls, communication with the attendant, or egress that would be affected by the loss of power. The definition is important because 1204(d)(5) requires employers to provide adequate lighting for egress in an emergency.

One commenter urged OSHA to clarify that an occurrence constituting the emergency must involve the work performed in the confined space (ID–099, p. 1). For example, in this commenter's view a heart attack that does not involve the working conditions in a confined space, but occurs while an employee is working in or near a confined space, would not qualify as an ''emergency'' under § 1926.1202. OSHA disagrees with this comment, and is not making this revision because the final standard uses the term ''emergency'' with respect to the provision of rescue services. (See, *e.g.,* final § 1926.1204(i), which requires the employer to develop and implement procedures for

responding to emergencies.) The Agency believes that an emergency occurs regardless of whether or not it is foreseeable based on the work the employee is performing within or near the confined space. Under the rescue provisions of this final standard, emergencies, regardless of their cause, require employers to initiate rescue of the affected employees working inside the confined space because of restricted access to, and egress from, the confined space.

Engulfment refers to the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance, such as water, dirt, sand, sawdust, or rocks. Any solid or liquid that can flow into a confined space and that can drown, suffocate, or crush an employee can be an engulfing medium. This definition is nearly identical to the definition of the same term in § 1910.146, except that it also includes ''or suffocation'' at the end of the definition, paraphrasing the following additional language from the proposed rule: ''or the substance suffocates the individual.'' This additional language clarifies that the definition includes suffocation that does not result from strangulation, constriction, or the blockage of any respiratory mechanism. For example, the definition includes surrounding an employee with a flowable material even if personal protective equipment or some other barrier (for example. a person trapped in sand while wearing respirator mask with an enclosed air source) delays immediate drowning or suffocation. The final definition does not differ substantively from the definition in the proposed rule, and OSHA received no comments on the proposed definition.

Entry means the action by which any part of a person passes through an opening into a permit-required confined space. Entry includes ensuing work activities in that space, and occurs as soon as any part of the entrant's body breaks the plane of an opening into the space, whether or not such action is intentional or the person performs any work activities in the space. This definition is similar to the definition of ''entry'' in § 1910.146(b), except OSHA added the last clause to clarify that this is a bright-line definition: entry occurs under all circumstances in which the entrant's body breaks the physical threshold of the opening, regardless of the events or actions that caused entry. For example, when an employer assigns an employee a task that would not ordinarily involve entry into a confined space, and the employee inadvertently falls into the confined space and does not perform any work in that space, the employee entered the space at the instant the first part of the employee's body crosses the plane of the confined space. This clarification is consistent with OSHA's longstanding interpretation of the general industry standard. See October 18, 1995, letter to Charles Bessey. As a result, an entry employer's duty to prevent unauthorized entry under § 1926.1204(a) means that the employer must take the necessary steps, such as installing barriers when appropriate, to prevent both intentional and unintentional entries.

As noted in the explanation for the definition of ''confined space,'' a space must be large enough to fit the entering employee's entire body to constitute a confined space. However, if the space is large enough to qualify as a confined space, any entry into that space constitutes an entry, even if the employee's entire body does not enter the space. This application is consistent with OSHA's design of this final standard: to ensure that this construction rule is enforceable. Therefore, OSHA declines to incorporate into this final rule its previous guidance offered with respect to the general industry rule to the extent that the guidance indicated that entry would not take place if only part of the body, and not the whole body, crossed the plane of the confined space. See July 13, 1993, letter to Dean Davenport (no entry into water pipe when employee stuck in an arm, but not the whole body). Absent some safeguard to ensure that the rest of the employee's body could not cross the threshold into the confined space, the likelihood of inadvertent entry into a space in the context of construction warrants a strict approach that differs from the more routine entries often associated with maintenance under the general industry standard. For example, an employee who sticks his/her head into a new space established during construction may be overcome by fumes and fall into the space or be rendered unable to remove his or her head from the space and avoid further exposure to the hazards.

The definition of ''entry'' in this final rule is slightly different than the proposed definition, but the differences do not change the substantive meaning of the term as proposed. OSHA made these changes to the proposed definition to make the final definition of ''entry'' similar to the definition of the term in § 1910.146(b).

Entry employer means an employer who decides that an employee it directs will enter a permit space. Paragraph (b) of § 1910.146 does not use the term ''entry employer''; instead, the general industry standard refers generally to ''employer.'' In general the term ''entry employer'' in this final rule and the term ''employer'' in § 1910.146(b) are synonymous because both terms identify the employer who must follow the accompanying confined-space procedures for employers that plan to enter a permit space. However, OSHA uses this term in this final rule to clarify that not all employers on a multi-employer worksite have duties associated with entering a permit space.

On a multi-employer worksite, each employer has a duty under this new standard to ensure that a competent person identifies all confined spaces in which any employee it directs may work (§ 1926.1203(a)). Each employer must then prevent the employees it directs from entering permit spaces or limit access to those spaces in accordance with the permit procedure (or alternatives) specified in this standard (see § 1926.1203(a) and (c)–(e)). Under the standard, an entry employer has a number of important duties that must be performed prior to anyone physically entering a permit space, such as the requirements for pre-entry information exchanges in § 1926.1203(h) and the duty to develop and implement a permit program to restrict access under § 1926.1204. Therefore, under the definition, an employer becomes an entry employer when it ''decides that'' an employee it directs will enter, rather than at the later point when the employee actually enters. An employer can be an entry employer regardless of whether that employer has completed any of the steps of instituting a permit program or an employee has actually entered the space.

However, OSHA does not intend for the ''decides that'' language in the definition to narrow the meaning of ''employer'' in any way or to focus on any deliberative or procedural process. OSHA has added a note to the definition of ''entry employer'' to emphasize that an employer cannot avoid the duties of the standard merely by refusing to decide whether its employees will enter a permit space, and OSHA will consider the failure to so decide to be an implicit decision to allow employees to enter those spaces if they are working in the proximity of the space.

The ''an employee it directs'' language encompasses temporary workers, permanent employees, and all other workers who are under the direction of the employer at the worksite, whether they are contracted directly or through a third party such as a staffing agency. For example, when a general contractor

contracts with a third party to bring on a temporary worker and assigns the worker to work in a permit space, the general contractor is an entry employer. However, if the temporary employee is assigned to a welding subcontractor, and the welding contractor makes the determination of where the temporary employee will work without direction from the general contractor, then the welding subcontractor would be the entry employer. The general contractor would not be an entry employer in the latter example.

Entry permit means the document, provided by the entry employer, which allows and controls entry into a permit space. Section 1926.1206—Entry Permit of this final standard specifies the contents of the permit. As part of its effort to specify the duties and responsibilities of different employers on a multi-employer worksite, OSHA specifies that the employer ''who designated the space a permit space,'' must prepare the permit, rather than just ''the employer'' as in § 1910.146. This definition is otherwise identical to the definition in § 1910.146(b). In a typical multi-employer worksite, all employers would have the duty to identify confined spaces that their employees might enter, but only some employers must establish a permit program and complete permits.

Entry rescue means rescue that occurs when a rescue service enters a PRCS to rescue one or more employees. This definition is identical to the proposed definition of ''entry rescue,'' except that the Agency clarifies that the term includes a rescue of a single employee. Section 1910.146(b) does not define ''entry rescue'' because the general industry standard does not use the term. The term is included in this final rule to make the requirements for each type of rescue more clear.

Entry supervisor means the qualified person (such as the employer, foreman, or crew chief) assigned by the employer to determine if acceptable entry conditions are present at a permit space where entry is planned, to authorize entry and oversee entry operations, and to terminate entry as required by the final standard. This definition is identical to the definition provided in § 1910.146(b), except that OSHA replaced ''person'' with ''qualified person'' as in the proposed rule (the proposed rule used ''qualified individual''), to clarify that the individual must meet the requirements for ''qualified person'' as defined later in this section. The note to this definition, which clarifies that the entry supervisor may enter the permit space or serve as an attendant if the applicable requirements are met, is identical to the note in the general industry definition.

Hazard means a ''physical hazard'' or ''hazardous atmosphere'' as defined by this standard. The proposed rule defined this term, and OSHA is including it here to clarify that references to a ''hazard'' or ''hazards'' can mean either physical or atmospheric hazards, or both.

Hazardous atmosphere refers to the five enumerated atmospheres, any one of which may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, unaided escape from a permit space), injury, or acute illness. The proposed definition of ''hazardous atmosphere'' varied slightly from the definition in § 1910.146(b), and several commenters requested that OSHA make the definition in this final rule more similar to the definition in § 1910.146(b) (ID–017, p. 1; –132, p. 2; –138, p. 3; –153, p. 12). OSHA did so, as explained below, and the final definition is substantively identical to the definition in the general industry standard.

One commenter noted that the proposed definition included ''existing or potential'' atmospheres, and argued that this language, combined with OSHA's failure to include a note that is part of the general industry definition of ''hazardous atmosphere,'' constituted an inappropriate expansion of the scope of this final standard compared to the general industry standard (ID–219.2, p. 72). OSHA addressed this commenter's concerns by adopting the general industry language, which does not refer to ''existing or potential'' atmospheres, and also included the note favored by the commenter. See the note after the fourth enumerated paragraph in the definition, which is substantively identical to the note in the general industry standard.

The five enumerated paragraphs or conditions in the definition address four specific types of hazardous atmospheres and a broad condition that encompasses any other atmosphere that is immediately dangerous to life or health. The first enumerated condition addresses an atmospheric condition that consists of a flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL). OSHA set this level to account for the difficulty employers have in detecting each and every flammable gas vapor, or mist. The LFL, as it is defined by the confined spaces in construction standard, refers to the minimum concentration of a substance in air needed for an ignition source to cause a flame or explosion. The LFL of the atmosphere is a cumulative measure that represents the mixture of different flammable elements, not just the presence of a single element that could lead to an explosion. Therefore, for the reasons explained below, OSHA has defined hazardous atmosphere as any atmosphere at or above 10 percent of a detected substance's LFL (10 percent LFL) to provide an adequate safety margin, and to ensure that an atmosphere does not exceed the LFL if one of a combination of substances goes undetected.

OSHA specifically asked for public comment on the propriety of defining a hazardous atmosphere for purposes of the confined spaces in construction standard at 10 LFL when § 1926.651(g)(1)(iii) prohibits exposure to atmospheres in excavations exceeding 20 percent of the LFL (20 percent LFL). Some commenters urged OSHA to permit 20 percent LFL in this final rule for the sake of uniformity, while another commenter favored this change only if credible data justifies this uniform LFL (ID–090, p. 1 and ID–108, p. 6; ID–060, p. 1, respectively). Other commenters, however, indicated that 10 percent LFL was more appropriate, and recommended that OSHA revise the subpart P LFL to 10 percent LFL to provide adequate safety to employees working in excavations (ID–132, p. 3; –140, p. 6). This last group of commenters noted that using 10 percent LFL would align the definition of ''hazardous atmosphere'' in this final rule with the general industry confined spaces rule at § 1910.146(b) and ANSI Z–117.1. One commenter also noted that because the LFL of many common petroleum based materials is approximately 1 percent of the total volume of the atmosphere, which would convert to 10,000 parts per million (ppm), 10 percent of that LFL is 1,000 ppm, which approaches the immediately dangerous to life or health (IDLH) (see below) level for many materials (ID–132, p. 3).

OSHA selected the 10 percent LFL in the final rule to match the general industry standard. As the Agency explained when selecting the 10 percent LFL in § 1910.146(b), the 10 percent level is ''widely recognized as being the threshold value for a hazardous atmosphere'' (58 FR 4473). The record indicates that this lower level continues to be more widely used and more appropriate than the 20 percent LFL suggested by the commenter, particularly now that the general industry standard is nearly 20 years old. (See also ANSI Z–117.1 (setting the maximum level at 10 percent LFL); ANSI 6.3.1.12 (setting the maximum level at *less than* 10 percent LFL.))

Moreover, the record does not include credible data to justify why the 20 percent LFL would be more appropriate for a confined space. OSHA may consider amending subpart P to a similar level in the future, but that decision is outside the scope of this rulemaking.

The second enumerated condition in the final definition addresses ''hazardous atmosphere'' consisting of an airborne combustible dust at a concentration that meets or exceeds its lower flammable limit (LFL). One commenter asked why OSHA did not propose a 10 percent LFL for combustible dust, similar to OSHA's approach for flammable gas, vapor, or mist in the first condition under this definition (ID–112, p. 6). OSHA did not propose a percentage of the LFL in defining a hazardous airborne combustible-dust concentration level for several reasons. Employers usually can visually judge the flammability hazard posed by airborne dust. Moreover, as OSHA noted in the preamble to the general industry standard, it is difficult at present to measure airborne concentrations of combustible dust reliably at a site, so there likely would be significant delays in determining whether the level of combustible dust meets the LFL at a particular site. Therefore, LFL determinations would appear to be unnecessarily burdensome with regard to combustible dust. OSHA concludes that the final rule will protect employees adequately so long as employers train their employees in the recognition of combustible dust, and ensure that the concentration of combustible dust remains below its LFL.

For this reason, OSHA has incorporated the note for this condition from § 1910.146(b), except that it has added the word ''combustible'' before ''dust'' to clarify the meaning of the note, and made a minor additional change from the proposed rule to make the final definition identical to § 1910.146(b). OSHA used LFL in this final rule definition, rather than ''lower explosive limit (LEL),'' which OSHA used in the proposed definition. OSHA notes, however, that the Agency uses these terms interchangeably. (See, *e.g.,* proposed definition of ''lower flammable limit or lower explosive limit'' at 72 FR 67406.)

The third condition of a hazardous atmosphere in this definition addresses the conditions of an atmospheric oxygen concentration below 19.5 percent (''oxygen deficient'') or above 23.5 percent (''oxygen enriched'') in a confined space. Four commenters suggested that OSHA change the oxygen-enriched level from 23.5 percent to 22 percent, which they noted is the level set by the National Fire Protection Association (NFPA) [8] (ID–25, p. 2; –27, p. 6; –28, p. 4; 95, p. 1). Two commenters suggested that increases in oxygen levels due to leaks of compressed oxygen used in ''hot work'' would more easily be detected if the maximum acceptable oxygen level was 22 percent instead of 23.5 percent (ID–95, p.1), as it is in the rules for maritime work. The commenters did not, however, provide any data or other information supporting the suggestion that the proposed level, which is identical to the level in the general industry standard, is not sufficiently protective. The absence of such information, the lack of incidents caused by oxygen levels between 22 and 23.5 percent lead OSHA to conclude that the difference is not significant. In addition, this consistency benefits employers that engage in both general industry and construction work. OSHA finalized the level at 23.5 percent so that it is consistent with the general industry confined spaces standard at § 1910.146(b), as well as the definition of ''enriched oxygen'' in OSHA's Respiratory Protection standard. This oxygen-enriched level also is the same as the level in the proposed definition of ''hazardous atmosphere.'' OSHA continues to believe that the 23.5 percent level provides a sufficient amount of time for employers to detect a hazardous oxygen-enriched atmosphere, and to exit the space safely, before the oxygen level gets so high that it begins to have adverse effects on the exposed employees. Other standards, such as Subpart J—Welding and Subpart V—Electronic Transmission and Distribution, set forth protective requirements for employees engaged in ''hot work'' that address the commenters' concerns.

Additionally, OSHA recognizes that safe levels of oxygen vary with altitude, and that concentrations of oxygen at or above the oxygen deficient limit of 19.5 percent in this final rule may still pose atmospheric hazards at very high altitudes. For example, ANSI/ASSE Z88.2–1992 recognizes an IDLH circumstance at altitudes of 5,000 ft. above sea level or higher, if the oxygen concentration is at 19.5 percent.[9] The Agency believes that most confined-space work takes place at altitudes lower than 5,000 ft. above sea level, and retains the 19.5 percent oxygen deficient limit in this final rule. However, the Agency notes that to the extent a high altitude causes an otherwise permissible oxygen concentration to become IDLH, such circumstances may also result in a ''hazardous atmosphere'' as set forth in the fifth condition in OSHA's definition, which defines a ''hazardous atmosphere'' to include any other atmospheric condition that is IDLH.

The fourth condition in the definition of ''hazardous atmosphere'' addresses an airborne concentration of a substance that exceeds the permissible dose or exposure limit specified by OSHA. The final definition includes cross-references to the applicable PELs in subparts D—Occupational Health and Environmental Controls and Z—Toxic and Hazardous Substances of 29 CFR part 1926, rather than the general reference to PELs specified in ''any OSHA requirement'' contained in the proposed rule. The form of the definition now duplicates the form found in the general industry standard. In addition, removing the reference to ''any OSHA requirement'' avoids the implication that PELs in general industry standards would apply to construction work.

One commenter requested that OSHA insert a note under this fourth condition explaining that the PELs in § 1910.1000 also would apply under this condition (ID–028, p. 5). OSHA did not include a reference to § 1910.1000 because those general industry PELs do not apply to construction work. Section 1926.55 establishes the relevant PELs for construction.

OSHA did, however, include a note to the fourth condition of the definition that is substantively identical to the note to the fourth subheading of the § 1910.146(b) definition of ''hazardous atmosphere,'' except that OSHA changed the word ''provision'' to ''definition'' to make it clear that the note applies to the types of hazards covered by the definition of ''hazardous atmosphere.'' OSHA sets its construction PELs at different levels for different reasons; some of these PELs prevent harm from substances that manifest quickly in the human body, such as [hydrogen sulfide and carbon monoxide, among others], while OSHA sets other PELs prevent harm from substances that produce long-term health effects but do not produce any acute effect on employees. The note

[8] NFPA 53 defines ''oxygen-enriched atmosphere'' as one in which the concentration of oxygen exceeds 21 percent by volume or its partial pressure exceeds 21.3 kPa. (See NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres, 2011 Edition at 3.3.25).

[9] The Agency also notes that an updated revision of ANSI/ASSE Z88.2–1992 was forthcoming at the time of its development of this final rule. The draft of the updated standard appeared to be consistent with the 1992 version on this issue.

makes clear that, for the purposes of determining whether a hazardous atmosphere exists under this final rule as the result of a concentration of a substance in excess of its PEL, employers need to address only the substances with PELs that could result in immediate harm or impairment of the employee's ability to perform self-rescue. See also the discussion in the general industry preamble at 58 FR 4474. For example, a short-term exposure to silica is unlikely to cause immediate injury. Likewise, nitrogen and carbon dioxide will not impair self-rescue unless their levels are so high that they replace significant oxygen, so that they act as an asphyxiant. The same is true for any inert gases, for example argon, neon and helium. Most of the substances with an OSHA PEL (in subparts D and Z of the construction standards) are based on long-term, chronic risks to health. Presumably, most of these substances do not pose a risk of an acute health effect or of self-rescue at exposure levels near the PEL. However, if extremely high levels of exposure far above a PEL occurred, one of these substances could potentially pose a risk to self-rescue, which would in turn trigger the fourth condition of hazardous atmosphere.

The note also addresses a comment that PELs regulating substances with long-term effects, such as iron oxide emitted during welding or xylene emitted when painting, should not automatically trigger the PRCS requirements (ID–028). While OSHA agrees that iron oxide by itself would not trigger permit restrictions because the symptoms of iron oxide exposure would generally not prevent an entrant from exiting a confined space, xylene is highly flammable and would therefore present a hazard if the potential exists for the concentration of xylene to exceed the LFL.

A different commenter suggested that OSHA avoid potential confusion by rearranging the order in which the subparagraphs in the definition of ''hazardous atmosphere'' are presented to reflect the order in which OSHA requires atmospheric testing and monitoring (oxygen content, flammability, then toxicity—see § 1926.1204(e)(3) of the final rule) (ID–132, p. 2). OSHA does not agree that the order of presentation in this definition is likely to cause confusion, particularly when the actual order of testing is spelled out in § 1926.1203(e). OSHA did not make this change in the final rule so that it could to keep the definition of ''hazardous atmosphere'' in this final rule similar to the definition of that term in § 1910.146(b), including the order of the listed conditions.

Host employer means the employer that owns or manages the property where the construction work is taking place. As explained in the definition of ''controlling contractor,'' OSHA added this definition to clarify the distinction between a host employer, a controlling contractor, and an employer performing confined space entry because each of these entities has specific obligations under this final rule. (See the discussion under ''controlling contractor'' above.) OSHA used the term ''host employer'' in the general industry standard without defining it, but the definition in this final rule is consistent with the use of the term in that general industry standard. It is also substantively the same as the proposed definition.

One commenter asserted that an employer should never meet the definition of ''host employer'' if the employer ''had no employees at all (a home owner, for example, might fit this category) or had no employees 'engaged in construction work' (an owner of an office building might fit this category)'' (ID–117, p. 5). OSHA notes that it has already addressed the commenter's first concern because an entity only meets the definition of a ''host employer'' under the final rule if it is ''an employer.'' OSHA disagrees with the commenter's second assertion, and has addressed the propriety of placing duties on the host employer, and OSHA's authority for doing so, in the discussion of § 1926.1203(h) later in this preamble.

OSHA also added a note to the definition of ''host employer'' to address situations in which the owner of the property contracts with a management company to manage the property. OSHA understands that this type of arrangement is somewhat common with commercial properties, and that in many cases the management company will be the principal custodian of blueprints and other information about the property that identifies confined spaces on the property or is otherwise relevant to confined spaces work on that property. Because the host-employer requirements in final § 1926.1203(h)(1) are designed to ensure that relevant information about the property and known hazards therein is conveyed to employers who will be performing work in confined spaces, OSHA clarifies in the note that the entity that possesses that information, either the owner or the management company, will serve as the host employer for the purposes of this standard for as long as the company manages the property (if there is a change in management companies, the initial management company would return the information to the owner, and the host employer duties would revert to the property owner until discharged to the new management company). The note also clarifies that only one of these entities will serve as a host employer. If a property owner contracts with a third party to manage the property, turns over all relevant information about the property that it has (the locations of permit space the hazards they contain, and the previous precautions used to address them) to the management company, then OSHA will treat the management company (not the property owner) as the ''host employer'' under this standard. That management company, rather than the owner, must then maintain the relevant information about the property and fulfill the duties of the host employer under this standard (*e.g.,* share that information with the controlling contractor). For example, if the owner transfers its records to the management company, including a map of the property showing a confined space marked for storage of containers of flammable liquids, then the management company must relay to the controlling contractor hired to oversee welding operations the location of that space, its contents, and any previous measures used to address them (*e.g.,* ''when the painters came, they tried to move the containers but the containers began to leak and soaked into the floors so the painters had to continuously ventilate the whole area during their entry.'') The property owners would not have a separate duty to relay that information to the controlling contractor. In another example, the owner of a commercial property hires a professional property management company to manage a property. The property owner turns over all relevant information to the management company. The management company contracts with a general contractor to oversee renovations in a furnace room and boilers on the property, and the general contractor hires a subcontractor to perform the construction work inside the boilers, which are activated through an electrical system. Under this standard, the management company has a duty to notify the controlling contractor that the boiler tanks are connected to the electrical system, the way in which that electrical hazard is normally addressed (*e.g.,* isolating the electrical hazards by disconnecting, and locking out, the power source).

Hot work means operations capable of providing a source of ignition, such as riveting, welding, cutting, burning, and

heating. In § 1910.146(b), OSHA defined ''hot work permit'' to describe the same activity, but focused on the permit rather than the work. OSHA did not include the word ''permit'' in the definition in this final rule because the final regulatory text uses only the term ''hot work,'' and does not use the term ''hot work permit.''

Immediately dangerous to life or health (IDLH) means any condition that could cause a threat to life, cause irreversible health effects, or otherwise inhibit an employee's ability to escape from a permit space. The proposed definition of ''IDLH'' also included separately any condition that exposes an employee to ''serious physical harm,'' which some commenters opposed. (ID–0013, p. 2; ID–219.2, p. 74; ID–0147, p. 3.) In particular, one commenter noted that the definition of ''IDLH'' in § 1910.146(b) does not include every condition that could cause ''serious physical harm,'' and asserted that the use of this term makes it less clear that an IDLH condition is one associated with urgent danger. (ID–0013, p. 2) For example, the commenter asserted that, under the proposed definition, an IDLH condition would be present when an employee breaks his/her nose.

Another commenter asserted that ''irreversible adverse health effects'' should not be an element of the IDLH definition unless OSHA adds language tying those effects to an impairment of the ability for self-rescue (ID–0219.2, p. 74.). OSHA notes that the revised definition of IDLH is applied in this standard through the definition of hazardous atmosphere, and excludes ''an atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness'' (see Note to the definition of ''hazardous atmosphere''). Thus, the standard follows the general industry standard and is as appropriately focused on conditions that would impair the ability to self-rescue as is the definition in the general industry standard. In a comment submitted after the hearing for this rulemaking, the same commenter did not object to the inclusion of ''irreversible adverse health effects'' in the general industry standard, asserting that the general industry standard ''does not regulate non-acute hazards'' (ID–219.2, p. and 71.) However, OSHA finds no evidence in the record, even after 20 years of experience with the general industry standard, that this ''irreversible adverse health effects'' component of the IDLH definition would be less appropriate for the construction industry. OSHA has thus modified the definition of IDLH to focus on conditions which would impair an entrant's ability to self-rescue and either pose a threat to life or have the capacity to cause irreversible adverse health effects, and notes that all other OSHA standards regarding exposure to hazardous substances continue to apply.

Inerting means displacing the atmosphere in a permit space by adding a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. The definition is identical to the general industry definition, except for a minor grammatical change. OSHA also included a note from the general industry standard to remind employers that the inerting process results in an atmosphere that is oxygen deficient; oxygen deficiency is a separate atmospheric hazard identified in the third subparagraph of ''hazardous atmosphere.'' Accordingly, the final rule prohibits employees from working in that space without a permit program which includes use of necessary PPE.

Isolate or Isolation means the process—such as misaligning or removing sections of lines, pipes or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages—that an employer uses to completely protect entrants from the release of energy or other hazard into a confined space. This definition is based on the definition in § 1910.146(b) and the proposed rule, but OSHA made two minor adjustments to the definition in this final rule and added a clarification regarding isolation of a portion of a contiguous space such as a sewer system. First, OSHA clarified that the purpose of isolation is to protect employees, rather than the space itself, from the release of hazards into the space. In most cases this involves isolating the entire space from a hazard, such as isolating a room from a potential source of flooding. However, in some cases employers may be able to isolate a hazard inside a confined space, and the final rule's emphasis on protecting employees, rather than the space, allows for that type of isolation. To that end, the second difference from the general industry definition is that in the final rule OSHA defines ''isolate'' to include employers' use of physical barriers to eliminate the opportunity for contact between an employee and a physical hazard inside a confined space, as requested by a commenter (ID–061, p. 6). This addresses commenter concerns that a single physical hazard such as low-hanging pipe or a sharp object would unnecessarily foreclose alternative entries under § 1926.1203(e) (discussed below) and require an employer to treat the entire space as a permit space even after the employer has taken steps to ensure that employees could not come in contact with the physical hazard. OSHA has reached a similar result in most circumstances by interpreting the general industry standard to allow employers to ''eliminate'' hazards in a similar manner without necessarily deeming it isolation. See, *e.g.,* October 27, 1995, letter to William Taylor (temporary floor could be used to eliminate fall hazard from inwardly converging walls). But in the construction context the addition to the definition of isolation addresses the issue directly and provides more flexibility for employers to address physical hazards for the purpose of alternative entries under § 1926.1203(e) (see the discussion of § 1926.1203(e) for additional explanation on the difference between the general industry standard and this final rule regarding alternative procedures for addressing permit spaces with hazardous atmospheres and physical hazards).

A different commenter suggested that using the term ''isolation'' to refer to the elimination of a physical or atmospheric hazard will be confusing since industry generally uses the term ''isolation'' to refer to the control of a hazard and not to the elimination of the hazard (ID–098.1). OSHA agrees that the terms are not interchangeable, and has tailored the definition of isolation accordingly. While eliminating a hazard or removing it altogether from a confined space would constitute means of isolating a hazard, isolating the hazard in the context of this rule does not necessarily eliminate it from the space altogether in the sense that the physical item may remain in the space and that it might still pose a hazard absent the isolation measures. For example, if exposed rebar is sticking out of a wall in a confined space, the employer may eliminate the hazard by pounding the rebar into the wall so that it does not protrude in any way; it may remove the hazard by cutting out the rebar and carrying it out of the space; or it may isolate the rebar by erecting a barrier in a manner that effectively prevents the possibility of anyone coming into contact with the rebar.

Both of the definitions in the general industry rule and this final rule permit ''tagout'' in addition to ''lockout'' as a means of isolating a hazard, but in both cases the tagout process involves more than the placement of a tag on equipment because tagging equipment does not prevent the release of a hazard into the space. As discussed below, OSHA has added definitions of ''lockout'' and ''tagout'' to ensure that

the regulatory text of this final rule reflects these critical elements of the general industry standard.

Several commenters asserted that the definition of ''isolation'' should not include misaligning or removing sections of lines, pipes, or ducts, but did not provide a reason for this assertion (ID–025, p.2; –027, p. 4; –095, p. 2). The general industry confined spaces standard at § 1910.146(b) includes misaligning or removing sections of lines, pipes, or ducts in its definition of ''isolation.'' Without a clear reason to depart from this established understanding of the term ''isolation,'' OSHA continues to include the misalignment or removal of sections of lines, pipes, or ducts as a form of ''isolation'' to match the definition of the term in § 1910.146(b). To the extent that the commenters were concerned that removing a section of pipe within a space would not isolate employees from a hazard entering the space, such an action would not meet the definition of ''isolation'' if it does not effectively and completely prevent employee exposure to the hazard. The removal of a section of a water pipe that would effectively divert water away from a confined space could be a form of isolating the employees in that space from the water hazard; disconnecting a sewer pipe in a location where fumes or physical hazards could still enter a confined space and affect employers (such as disconnecting the pipe at a location inside the confined space or immediately adjacent to the space where the remainder of the pipe entering the confined space is not sealed) does not meet the definition of ''isolation.''

Another commenter asserted that defining ''isolation'' differently from ''control'' could cause confusion (ID–025, p. 2). This comment highlights the need to have a separate definition: ''Isolate or isolation'' is distinct from ''control'' in this final rule because the former term requires the elimination or removal of the hazard. Control, on the other hand, merely entails a reduction in the degree of a hazard or a reduction in the risk that the hazard will cause an injury or death. For example, an employer can control an atmosphere through ventilation, but it cannot use ventilation to isolate a space from a hazard.

Limited or restricted means for entry or exit means a condition that may obstruct an employee's ability to exit or enter a confined space, including trip hazards, poor illumination, slippery floors, inclining surfaces and ladders (see the earlier discussion of the definition of ''confined space'' for a discussion of ladders). The proposed construction rule, but not the general industry standard, defined this term. The proposed definition referred to ''hazards'' rather than ''trip hazards.'' OSHA did not include in this final standard the reference to all ''hazards'' because the Agency believes that term was potentially too broad, and that its inclusion in this final standard would render all the other examples redundant. Instead, the final definition refers to ''trip hazards,'' which is a condition that is similar to the other examples, and provides a greater degree of guidance than the term ''hazards.''

One commenter objected to the inclusion of ''poor illumination and slippery floors'' in the definition, arguing that the regulated community does not generally understand these conditions as ''limited or restricted means for entry and exit'' as used in the general industry confined spaces standard at § 1910.146(b) (ID–153, p. 14). The commenter did not explain why poor illumination and slippery floors would not limit or restrict means for entry or exit. The same commenter acknowledged that § 1910.146 does not define this term, but nevertheless accused OSHA of ''changing the meaning of the term.'' OSHA disagrees, and is retaining the list of examples in the final rule. The Agency previously explained in its compliance directive on general industry confined spaces, OSHA Directive CPL 02–00–100: Application of the Permit-Required Confined Spaces (PRCS) Standards, 29 CFR 1910.146 (May 5, 1995), that a ''space has limited or restricted means of entry or exit if an entrant's ability to escape in an emergency would be hindered.'' Therefore, OSHA concludes that the meaning of ''limited or restricted means for entry and exit'' as used in the general industry standard already encompasses these conditions, and that the Agency is simply providing the same guidance more explicitly in this final standard.

Line breaking refers to the process of opening a pipe or duct when the substance inside could injure an employee because of the characteristics of the substance or the manner in which it is released from the conductor. This definition is identical to the corresponding definition in the general industry standard. Although the term is not otherwise used in the text of this final standard (or in the text of the general industry standard), OSHA included it for parallelism with the general industry standard and to inform construction employers of the hazards that may be associated with opening an existing pipe or duct.

Lockout refers to a means of isolating a physical hazard (typically an electric-powered device) by placing a lockout device on an energy isolating device in accordance with established procedures to ensure that the equipment which poses a hazard and the energy isolating device cannot be operated or inadvertently energized until the lockout device is removed. This definition is identical to the definition in the general industry standard (see § 1910.147(b)). OSHA has included it to maintain consistency with the general industry approach to lockout in confined spaces. As discussed in the explanation for ''Isolate or isolation'', above, lockout is one method of isolating a physical hazard in a confined space.

Lower flammable limit (LFL) or lower explosive limit (LEL) means the minimum concentration of a substance in air needed for an ignition source to cause a flame or explosion. The measurement is usually expressed in terms of percentage by volume of gas or vapor in air. When more than one type of flammable substance is present in the air, the LFL is derived from the combined sum of all flammable substances as a percentage of the total atmosphere. The definition is identical to the proposed definition and is consistent with the use of the term in the general industry standard. The Agency did not receive any comments on this definition.

Monitor or monitoring means the process used to identify and evaluate the hazards after an authorized entrant enters the space. This is a process of checking for changes that the employer must perform in a periodic or continuous manner after the completion of the initial testing or evaluation of that space.[10] The proposed rule included a definition this term. OSHA included the definition in this final rule, but revised it slightly to make it clear that monitoring does not apply solely to atmospheric hazards.

Non-entry rescue means a rescue, usually by the attendant, that retrieves employees in a permit space without the rescuer entering the permit space. While the general industry standard does not include a definition of this term, the proposed rule did include such a definition. OSHA included the definition in this final rule, but clarified the distinction between entry rescue, as defined above, and rescue that does not involve entering the permit space.

Non-permit confined space means a confined space that meets the definition

[10] OSHA uses ''periodic testing'' and ''periodic monitoring'' interchangeably in this standard.

of a confined space, but does not meet the requirements for a permit-required confined space, as defined in this subpart. This term, as defined in the general industry standard at § 1910.146(b), requires a separate analysis of hazards or potential hazards. OSHA revised the general industry definition in the final rule to make it clear that a non-permit confined space is simply the inverse of a permit-required space: It meets all of the requirements to be a confined space, but does not meet the criteria to be a permit-required confined space (see the discussion of the definition of ''permit-required confined space'' below in this preamble). A confined space in which all physical hazards are isolated or eliminated and in which there are no actual or potential hazardous atmospheres is a non-permit confined space.

Oxygen deficient atmosphere means an atmosphere containing less than 19.5 percent oxygen by volume. This final standard defines the term exactly as it is in § 1910.146(b).

Oxygen enriched atmosphere means an atmosphere containing more than 23.5 percent oxygen by volume. The final standard also defines this term exactly as it is in § 1910.146(b).

OSHA based the general industry definitions for ''oxygen deficient atmosphere'' and ''oxygen enriched atmosphere'' on levels set by the National Institute for Safety and Health (NIOSH) (see 58 FR 4474 and 4476). The proposed rule did not include separate definitions of these terms, but did incorporate the same levels into the definition of ''hazardous atmosphere.'' As discussed in the explanation above of ''hazardous atmosphere,'' OSHA does not agree with several commenters' suggestions for an alternative oxygen level. OSHA did not receive any other comments disputing that the construction industry generally accepts these definitions of the terms.

Permit-required confined space (permit space) means a confined space that has at least one of the following characteristics: (1) Contains or has the potential to contain a hazardous atmosphere; (2) contains an engulfment hazard; (3) is configured so that it poses a risk of entrapment or asphyxiation; or (4) any other recognized serious hazards. OSHA revised this definition in final rule § 1926.1202 to make it identical to the definition in the general industry confined spaces standard at § 1910.146(b). Consequently, the final rule diverges from the proposed rule in that OSHA revised the order of the characteristics from the proposed rule, clarified that a potential hazardous atmosphere can trigger a permit space, and separated the third and fourth characteristics from the proposed definition (''an engulfment hazard or other physical hazard'') so that engulfment hazards addressed in the second characteristic in the final definition while some physical hazards are encompassed by ''other recognized serious safety or health hazard'' in the fourth characteristic; there was not a fourth characteristic in the proposed definition. Otherwise, this definition is the same as the definition in the proposed rule.

Several commenters noted that the proposed definition of ''permit-required confined space'' included any ''physical hazard,'' and asserted that the definition of ''permit space'' would, therefore, include non-serious hazards in a confined space (ID–013, p. 3; –147, pp. 2–4). In the proposed rule, OSHA addressed this concern in the definition of ''physical hazard,'' which limited the definition to hazards that were capable of causing ''death or serious physical harm.'' In this final rule, OSHA defined the term to match the definition in § 1910.146(b), which specifies that the phrase ''contains any other recognized serious safety or health hazard'' applies only to serious hazards, and the definition of serious physical harm (now ''serious physical damage'' in the final rule) excludes injuries that could not impair the ability of an entrant to escape the space without assistance. As noted in the explanation of the definition of hazardous atmosphere, this standard is focused on hazards that could impair the ability of an entrant to self-rescue.

The proposed definition of permit-required confined space referred to a ''hazardous atmosphere,'' which OSHA defined to include an existing or ''potential'' atmosphere. One commenter urged OSHA to clarify that a ''potential hazardous atmosphere'' is a hazardous atmosphere that an employer could anticipate, as opposed to a hazardous atmosphere that is ''remotely possible under unforeseen conditions,'' such as a train carrying chlorine crashing and causing a toxic cloud of chlorine that engulfs an entire worksite. (ID–0138, p. 4.) The phrase ''potential to contain a hazardous atmosphere'' in the context of this final rule refers to the existing conditions affecting the confined space at the time of entry and any changes to those conditions over the duration of the entry, and limits hazards to those hazards that a qualified person should anticipate would affect that space. If an employer becomes aware (or should be aware) of the release of a toxic gas that could enter the confined space, or detects such a gas near a ventilation source for that space, then the space would have the potential to contain a hazardous atmosphere when the PEL or LEL are below the ''hazardous atmosphere'' levels. The potential for a hazardous atmosphere remains until the employer confirms that the space is completely free of the toxic gas or the gas level rises to a hazardous level.

As OSHA stated in a December 2, 2005, letter to Ms. Laura Johnson, a potential hazard exists if the employer does not entirely remove the source of the hazard. For example, a space will have the potential to contain a flammable atmosphere if any piping, containers, materials brought into the space, or residual contamination of the space brings combustible dust or flammable gas, vapor, or mist into the space. Employers can refer to a substance's Safety Data Sheet (SDS) as one indicator of the hazards the employer should reasonably anticipate as a result of using a particular substance. Testing and monitoring are some other methods of identifying potentially flammable atmospheres. OSHA also previously clarified that an appropriate lockout procedure that blocks a potentially hazardous atmosphere does *not* eliminate the potential for a hazardous atmosphere, so the space cannot be classified as a non-permit-required space. See August 28, 1995 letter to William K. Principe. Under this final rule, however, employers who can effectively isolate a potential hazardous atmosphere by using one of the other techniques described in the definition of the term ''isolation'' in § 1926.1202 (excluding lockout/tagout) may be able to re-classify the space.

Permit-required confined space program (permit space program) means the employer's overall program for regulating employee entry into permit spaces and protecting employees from permit space hazards. This definition of this term in the final standard duplicates the term's definition in § 1910.146(b). An employer need not tailor a confined space program specifically to each space entered. If the permit contains most of the relevant information required by this final rule, the program may be general and designate the particular permit that the employer developed earlier for such work, along with any other testing procedures, PPE, or other information normally required in response to the types of hazard present in the space. Accordingly, the employer is still responsible for developing the appropriate plans and other information

required by this standard to address the unique conditions of each space.

In the general industry standard, OSHA uses the term ''permit system'' as the heading for § 1910.146(e), and defines it in § 1910.146(b). In the final rule, OSHA uses the term ''permitting process'' as the heading of the parallel requirement at § 1926.1205, but does not employ the term anywhere else in the text of the final rule. OSHA, therefore, chooses not to provide a separate definition of ''permitting system'' in § 1926.1205 because such a definition is unnecessary; the ''permitting system'' is comprised of the requirements of § 1926.1205.

Physical hazard means an existing or potential hazard that can cause death or serious physical damage. Examples include: Explosives (see paragraph (n) of § 1926.914 for the definition of ''explosive''); mechanical, electrical, hydraulic, and pneumatic energy; radiation; temperature extremes; engulfment; noise; and inwardly converging surfaces. The term ''physical hazard'' also includes chemicals that can cause death or serious physical damage through skin or eye contact (rather than through inhalation). The general industry confined space standard does not define the term ''physical hazard.'' OSHA uses the term ''physical hazard'' throughout this final rule, however, and defined this term in the proposed rule to clarify its meaning.

The proposed definition of ''physical hazard'' referred to a hazard that can cause harm ''in or near a confined space,'' or a hazard that might ''occur'' in or near the confined space. OSHA deleted the language tying the location of where the harm could occur to the meaning of ''physical hazard'' because a condition establishing a physical hazard can exist wherever it is regardless of proximity to a confined space (*e.g.,* exploding dynamite is a physical hazard whether or not it is in or near a confined space, and an engulfment hazard may originate in a sewer far upstream from where employees are located). OSHA provides appropriate guidance in the implementing requirements of the final standard to ensure that the standard focuses on physical hazards related to confined spaces. See discussion of final §§ 1926.1203 and 1926.1204 in this preamble.

The proposed definition of ''physical hazard'' also referred to a hazard that has a ''reasonable probability'' of occurring, and referred to the same list of examples now incorporated into the text of the final rule. OSHA has replaced that phrase with ''potential hazard'' to keep the terminology consistent with the general industry standard. Both § 1910.146 and this final rule use the term ''potential hazard'' throughout the standard, so OSHA is using the term with which the industry is already familiar.

One commenter noted that, in the proposed rule, OSHA defined ''physical hazard'' to encompass not only hazards that could cause death or serious physical harm, but also ''a hazard that has a reasonable probability of occurring in or near a confined space'' (ID–219.2, p. 75). The latter part of the definition did not require the hazard to result in death or serious physical harm, so the commenter objected on the grounds that the definition of ''hazard'' would be unnecessarily broad because it would cover minor hazards (*i.e.,* ''a stubbed pinky finger or toe'') that would, in turn, trigger the permit restriction in the proposed standard (*id*). This final definition does not encompass stubbed fingers or toes or other minor injuries; therefore, the Agency did not include the extra component of the proposed definition in the final rule. The definition duplicates the general industry standard in this regard, and it also limits coverage to hazards that can cause death or ''serious physical damage,'' which OSHA has defined to clarify the differences between ''serious physical damage'' in this standard and ''serious physical harm'' as it is used in other OSHA standards. For additional information, see the explanation for the definition of ''serious physical damage'' below in this preamble.

Another commenter asserted that the definition of ''physical hazard'' should not encompass equipment or material inside a confined space that could cause an ''impact hazard'' (*e.g.,* ''a low hanging pipe or angle iron strut'') simply because it is present inside a confined space and could injure an employee who comes into contact with it (ID–061, p. 7). The commenter expressed concern that if OSHA included these types of equipment or materials, the alternate procedures set forth in § 1926.1203(e) of the final rule would almost never be available because such spaces must be free of physical hazards. In response, OSHA modified the definition of ''isolation'' and the ventilation alternative procedure in § 1926.1203(e) to make it clear that this alternative procedure remains an option for employers if the employer protects entrants sufficiently from the impact hazards by eliminating them or isolating them through the use of engineering controls. For example, if a low-hanging pipe does not obstruct the entrance or egress of the space and is adequately padded to prevent potential employee exposure to the hazard, or there is enough room in the confined space to barricade the hazardous condition and prevent employee exposure to the hazard posed by the pipe, OSHA would consider the physical hazard isolated within the meaning of that term in this final standard. If there are no other physical hazards in the space, and the employer can demonstrate that it satisfied the other conditions of § 1926.1203(e), then the employer may use the ventilation alternative procedure in that space.

If, however, there is a piece of equipment or other physical object inside a confined space that could cause serious physical damage to an employee upon impact, and the employer does not eliminate or isolate that hazard, then the employer must follow all of the PRCS procedures set forth in § 1926.1204. The commenter did not provide any evidence of why an ''impact hazard'' is different than any other type of physical hazard, nor did the commenter indicate any inherent restrictions on physical movement that would necessarily limit the force of the impact to a level not capable of causing serious physical damage. In the absence of such evidence, OSHA believes that an object such as a low hanging pipe or angle-iron strut has the same potential to impair the ability of an entrant to exit the confined space unaided as other physical hazards. For example, an entrant could walk into a low-hanging pipe and receive a head injury that could render the entrant unconscious, or the entrant could receive some other form of serious injury to another part of the body that could render the entrant immobile.

Two commenters suggested that the examples in the definition should include both fire and crush hazards (ID–025, p. 2; –095, p. 2). Another commenter suggested that the final rule definition should include falls as an example (ID–211, Tr. p. 42.) OSHA agrees that each of these is an example of a physical hazard, but notes that the list of examples provided in the definition is not an exhaustive list. Therefore, OSHA concludes that it is not necessary to add to this non-exhaustive list.

The Agency included ''noise'' in the proposed definition of ''physical hazard'' as one example of such a hazard because sound waves constitute a physical disturbance of the air that results in a physical impact on the human ear. Several commenters asserted that excessive noise should not trigger the application of PRCS procedures when no other hazard exists (ID–112, p. 17; –114, p. 2; –138, p. 4). These commenters indicated that the

final standard should not treat noise as a physical hazard if the noise did not rise to the level of impairing the ability of an entrant to exit the space without aid; however, these commenters did not assert, or provide any evidence supporting the view, that noise alone is incapable of such impairment or otherwise causing serious physical damage, as OSHA defines it in this final rule. Therefore, OSHA is retaining the term ''noise'' as an example of a physical hazard in this final definition.

One of the commenters questioned whether noise levels exceeding the decibel levels specified in § 1926.52, OSHA's construction noise standard, would trigger the permit-space requirements. The final construction confined spaces standard does not specify this threshold, and OSHA notes that noise will only trigger PRCS procedures if it reaches a level at which it can cause death or serious physical damage. For example, noise would constitute a physical hazard if it is loud enough to substantially reduce the efficiency of the entrant's ears to process communications from the attendant or entry supervisor regarding exit instructions or other emergency information, thereby impairing the ability of the employee in the permit space to exit the space safely (see the definition of ''serious physical damage,'' which includes ''an impairment . . . in which a body part is made functionally useless or is substantially reduced in efficiency'' and specifically mentions disorientation). OSHA has previously recognized the capacity of noise to create a hazardous situation by masking warning shouts or signals (see, *e.g.,* OSHA's preamble to § 1910.95, the general industry noise exposure standard, at 46 FR 4080 (Jan. 16, 1981). Employers generally can address these types of noise hazards by implementing a permit program that uses non-auditory cues, such as flashing lights, to resolve communication issues.

In some cases, the sound waves from an explosion or other air disturbance may be so intense that it might cause physical pain or disorient an entrant to the extent that it could impair the ability of the entrant to exit the space unaided. See, *e.g.,* Stephen A. Fausti, Ph.D., et al., *Auditory and vestibular dysfunction associated with blast-related traumatic brain injury, Journal of Rehabilitation Research and Development,* Vol. 46, No. 6 (2009) pp. 797–810 (discussing the impacts of excessive noise exposure, such as the noise caused by a blast or explosion, including immediate temporary hearing loss and sensory damage).

Two of these commenters asserted that the use of personal protective equipment can protect employees effectively from noise hazards, but expressed concern that OSHA would prohibit employers from working in a confined space with excessive noise because the definition of ''control'' provides explicitly that ''personal protective equipment is not a control'' (ID–114, p. 2.) As another commenter noted, OSHA would treat earplugs as protection from a hazard, but not control of the hazard, and, therefore, would prohibit work in an area with an uncontrolled noise hazard (ID–112, p. 17).

The final rule will not prevent work in a noisy confined space if employees are properly protected. In the final rule, OSHA requires employers to protect their employees adequately from confined-space hazards; in protecting employees, other construction standards also would apply. Therefore, if the noise is above the decibel levels specified in 29 CFR 1926.52, employers must protect their employers in accordance with that section, regardless of whether the noise conditions trigger the permit-space requirements of this final standard. OSHA's Field Operations Manual provides that employers may ''rely on personal protective equipment and a hearing conservation program, rather than engineering and/or administrative controls, when hearing protectors will effectively attenuate the noise to which employees are exposed to acceptable levels.'' (CPL 02–00–150 at Ch. 4, XI.B). However, feasible administrative and/or engineering controls must be used when personal protective equipment may not reliably reduce noise levels received to the levels specified in the standard or when those controls are less expensive than an effective hearing conservation program. Employers choosing to rely on personal protective equipment instead of administrative or engineering controls must ensure that employees will be aware of continuous monitoring alarms and other hazard alerts in a timely manner regardless of PPE use. Therefore, to promote consistency with OSHA's treatment of noise hazards under § 1926.52, OSHA permits employers to use these same methods to address the noise hazards in a permit space so long as the administrative and engineering controls, or the personal protective equipment, do not interfere with the ability of the entrant to maintain effective communication with the attendant and other workers. Notwithstanding the general statement in the definition of ''control'' that personal protective equipment does not constitute a control, OSHA is permitting employers to use appropriate hearing-protection equipment as a means of addressing a noise hazard in a permit space when the PPE attenuates the noise to acceptable levels. However, if the employer is unable to reduce an employee's exposure to noise to a level where it does not constitute a threat of death or serious physical damage, then the employer must not permit employees to enter any portion of the permit space that would expose the employee to such a noise level.

Prohibited condition means any condition in a permit space not allowed by the permit during the period of authorized entry. This portion of the definition is identical to the definition in § 1910.146(b), and is similar to the definition of ''unplanned condition'' in the proposal. In addition, the Agency added a sentence to the definition in the final standard to clarify that a hazardous atmosphere is always a prohibited condition, unless the employer can demonstrate that use of appropriate PPE will effectively protect entrants; this added condition means that employees cannot work in a hazardous atmosphere without the appropriate PPE. The definition of hazardous atmosphere in the general industry standard implies this condition, which the Agency made explicit in this final rule for construction.

Qualified person means one who successfully demonstrates his/her ability to solve or resolve problems relating to the subject matter, the work, or the project. While the general industry does not include this term in the definition of ''entry supervisor,'' the proposed rule did, and OSHA retained this term in the final standard. While the proposal did not define ''qualified person,'' the final rule's definition is similar to definitions of the term found in § 1926.32(m) and other subparts of OSHA's construction safety standards (see, *e.g.,* § 1926.1401—Cranes and derricks in construction). In this way the final rule clarifies that an ''entry supervisor'' clarifies that the employer must ensure that the entry supervisor has sufficient experience to properly conduct identification, testing, and planning for the type of confined space involved.

Representative permit space means a confined space, or mock-up of a confined space, that has entrance openings that are similar to, and is of similar size, configuration, and accessibility to, the permit space that authorized entrants enter. OSHA simplified this definition from the definition included in the proposed rule, but the simplification is a non-

substantive change that clarifies the criteria for a representative permit space. OSHA changed the term from ''simulated permit-required confined space'' to ''representative permit space'' because the Agency used the latter term in the general industry confined spaces standard at § 1910.146; however, changing the terminology has no effect on the meaning of the term and the requirements relating to it. OSHA changed this terminology to make this final rule more consistent with § 1910.146, for the reasons set forth above in the section, ''Decision to abandon the proposed new classification system.''

Rescue means retrieving, and providing medical assistance to, one or more employees who are in a permit space. OSHA defined this term in the proposed rule, and included the term in the final rule unchanged except for addition of the phrase ''one or more'' to clarify that a rescue can involve the retrieval of a single employee.

Rescue service means the personnel designated to rescue employees from permit spaces. This definition duplicates the definition of the term in the general industry standard at § 1910.146. In the proposed rule, OSHA included specific statements that the term applied to both onsite and offsite personnel, and to personnel designated by the employer for either non-entry or entry rescue (or both). In the final standard, OSHA elected to use the broader language of the general industry standard for consistency; however, the Agency believes that there is no substantive difference between the proposed and final standards in the meaning of these statements.

Retrieval system means the equipment used for non-entry rescue of persons from permit spaces. The purpose of the retrieval system is to provide a means of removing an entrant from a space quickly without exposing any additional employees to the hazards of permit-space entry. This equipment typically includes a retrieval line attached around the chest of the entrant or to a full-body harness worn by the entrant, with the other end of the line attached to a lifting device or anchor. Alternatively, the retrieval system may consist of a retrieval line attached to wristlets or anklets when this method of pulling the entrant from the confined space would be safer than using a body harness.

The definition of this term in the final standard duplicates the definition found in § 1910.146 except that it allows for the use of anklets. In proposed § 1926.1213(a)(4), OSHA permitted the use of ''ankle straps'' for retrieval in certain cases, and at least one commenter supported this option in limited circumstances such as some horizontal entries (ID–94, p. 1) (see also the discussion of the requirements retrieval lines in § 1926.1211(c)(1)).

Serious physical damage refers to an impairment or illness in which a body part becomes functionally useless or substantially reduced in efficiency.

One commenter noted that the proposed definition (''serious physical harm'' in the proposed rule) included impairments that are ''chronic,'' in addition to impairments that are ''acute,'' and asserted that this definition is, therefore, too broad because it would apply on exposing an employee to a minor hazard that would not interfere with the ability to self-rescue (ID–219.2, p. 76).

The term ''serious physical harm'' has a longstanding meaning within the OSH Act that developed over many years through litigation and many rulemakings. When developing the definition used in the final rule, OSHA used the Agency's common understanding of ''serious physical harm,'' as provided in the Agency's Field Operations Manual (FOM), which provides guidance to OSHA personnel conducting inspections and other activities in the field.[11] The Agency acknowledges that the FOM, compared to the final rule, has a broader purpose of providing guidance for the enforcement of the OSH Act as a whole, and that the inclusion of the phrase ''acute or chronic'' from the FOM in the definition may not provide meaningful guidance in the context of this final rule. Therefore, OSHA changed the term to ''serious physical damage'' to distinguish it from the broader term used in the FOM and other contexts, and also did not include the phrase ''or acute or chronic'' in this definition. By doing so, OSHA addressed the commenter's concern that the reference to ''chronic'' impairments would ''cause the standard to apply to conditions that cannot pose a significant risk of harm from the entry'' and thereby ''increase the cost of the standard so drastically as to render it infeasible for all construction industry sectors'' (ID–219.2, p. 72). In addition, OSHA recognizes that a similar issue exists with the reference to illness. The proposed definition included ''illnesses that could shorten life or substantially reduce physical or mental efficiency by impairing a normal functioning body part.'' This language could be read as including chronic illnesses that do not limit the ability to self-rescue. For the purposes of this standard only, OSHA intends the reference to illness to encompass only those illnesses that could interfere with the entrant's ability to exit the confined space. Therefore, the final rule deleted this language, and inserted ''illness'' after ''impairment'' to make clear that only illnesses that could impede self-rescue are covered in the meaning of serious physical damage.

Nevertheless, the Agency does not believe that these distinctions make a meaningful difference in employer duties because the majority of hazards in a confined space that could cause a serious physical injury are also likely to have the potential to impair the entrant's ability to exit the space without aid. As OSHA stated in the FOM in a note explaining the term ''serious physical harm'': ''The key determination is the likelihood that death or serious harm will result *IF* an accident or exposure occurs'' (Emphasis in the original).

Although one commenter belittled the proposed definition of ''serious physical harm'' as encompaasing a ''stubbed pinky finger or toe'' criticized the potentially broad scope of ''serious physical harm'' by suggesting that it would include ''a stubbed pinky finger or toe'' (ID–219.2, p. 75), such an argument improperly shifts the focus of the standard away from the hazard requiring protection and to the potential outcome of employee exposure to that hazard. If, for example, there is a physical obstruction in a confined space that is only capable of inflicting, as a maximum injury, a stubbed toe or finger, then OSHA agrees with the commenter that such an obstruction would not trigger any permit space requirements under this final standard. However, if it is reasonably foreseeable that an obstruction could cause the entrant to trip and either strike his/her head and lose consciousness, or fall and break his/her arm or leg thereby impairing the entrant's ability to exit the space, then the presence of this hazard would trigger the permit-space requirements of this standard, and the entry employer would need to address the hazard to protect employees it directs.

[11] OSHA based the definition in the proposed rule on the Field Inspection Reference Manual, chapter III, section C.2.b(2)(c). See 72 FR 67358. OSHA subsequently published the Field Operations Manual and updated it in April, 2011, but the definition of ''serious physical harm'' remains unchanged from the previous version: ''Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor or other licensed health care professional.'' See CPL 02–00–150 II.C.3. at p. 4–11.

Tagout, as used in this confined spaces standard, is a two-step process that follows the general industry approach: First, a tagout device must be placed on a circuit or equipment that has been deenergized, in accordance with an established procedure, to indicate that circuit or equipment being controlled may not be operated until the tagout device is removed. Second, the employer must ensure that the tagout provides equivalent protection to lockout, or that lockout is infeasible. If lockout is infeasible, the employer must tag the equipment and also provide protection from stored (residual) energy. This ensures that the final rule is more closely aligned with the full protections required for general industry work.

Both the general industry rule and this final rule permit ''tagout,'' in addition to ''lockout,'' as a means of isolating some hazards. The Agency added a definition of ''tagout'' to the construction standard because OSHA intends the tagout process under this construction rule to parallel the process under the general industry rule, which requires compliance with § 1910.147—The control of hazardous energy (lockout/tagout) (see § 1910.146(b); § 1910.147(a)(3)(ii)).[12] That tagout process involves more than the placement of a tag on equipment, and the final rule's definition of ''tagout'' ensures that the regulatory text of this final rule reflects the critical additional elements of the general industry standard.

First, tagging equipment does not, by itself, prevent the release of a hazard into the space. Therefore, under § 1910.147(c)(2), an employer may use tagout alone (*i.e.,* not in conjunction with lockout) only if an energy isolating device is not capable of being locked out or the employer can demonstrate that the utilization of a tagout system will provide full employee protection. The standard specifies that ''full employee protection'' means that the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program (§ 1910.147(c)(3)). Paragraph (2) of the final rule's definition of tagout requires employers to ensure the same level of safety if they use tagout when lockout is feasible.

Second, the general industry standard provides examples safety measures employers may use as a part of the tagout process to reduce the likelihood of inadvertent energization: Removal of an isolating circuit element, blocking of a controlling switch, opening of an extra disconnecting device, or the removal of a valve handle (§ 1910.147(c)(3)(ii)). Under the final rule, employers may also use these methods, when applicable to their work, as part of their process for fulfilling their obligation to ensure that tagout provides equivalent protection to lockout. Finally, even when tagout is used alone, the general industry standard requires the employer to relieve, disconnect, restrain and otherwise render safe stored (residual) energy (see § 1910.147(d)(5)).

This same requirement applies in this final rule to the use of tagout alone.

Test or testing means the process by which employers identify and evaluate the hazards that may confront entrants of a permit space. Testing includes specifying the identification and evaluation processes the employer will perform in the permit space. This definition is similar to the definition found in § 1910.146, except that OSHA added the word ''test'' to clarify that the definition applies to both words. OSHA is also including a note identical to the note to this definition on the general industry standard. The note emphasizes the importance of testing as the basis for developing and implementing adequate control measures.

Ventilate or ventilation means controlling a hazardous atmosphere using continuous forced-air mechanical systems that meet the requirements of 29 CFR 1926.57—Ventilation. This definition is identical to the definition of these terms in the proposed rule. Some commenters asserted that the final definition should allow for the use of suction as a form of ventilation (ID–061.1, p. 1; –210, Tr. p. 289). Although the final rule does not prohibit the use of suction, suction is not an adequate means of providing the general ventilation required by this final rule. The general industry standard does not include a definition of ''ventilation,'' but OSHA interpreted that standard as precluding the use of ''negative'' suction ventilation to meet the requirements of the standard. See April 24, 1996, letter to Verne Brown. Suction may be appropriate to remove contaminants from a specific operation close to the source of the contaminant, but not for general ventilation of the entire confined space. OSHA is, therefore, including the proposed definition of ''ventilate'' in the final rule.

Another commenter requested clarification regarding how an employer can use forced air to ''ventilate'' while also complying with OSHA's welding requirements at § 1926.353(a) through (e) (ID–061.1, p. 2). Section 1926.353(a)(3) requires local exhaust ventilation (LEV) when general mechanical ventilation does not provide sufficient protection. In addition, § 1926.351(a)(1) authorizes the use of general mechanical ventilation. The overlap of the welding standard and this confined spaces standard is addressed earlier in the explanation of § 1926.1201(c). Both of these practices are consistent with the requirement in this final rule that employers use ventilation that consists of continuous forced-air. Accordingly, this confined spaces standard requires that employers use continuous forced-air ventilation to ventilate confined spaces. When an employee is welding inside a confined space, § 1926.353(a)(3) may require the employer to also implement LEV. In conclusion, OSHA believes that LEV alone is not sufficient for the purposes of providing general ventilation of a confined space because LEV might not eliminate all of the toxic material from the area, and any residual fumes would be more likely to build up and create a potential or actual hazardous atmosphere in a confined space.

Section 1926.1203—General Requirements

Final § 1926.1203 sets forth general requirements for employers that have operations within the scope of this standard. This section establishes a comprehensive regulatory framework under which employers must identify any permit spaces at their workplaces and take appropriate measures for the protection of affected employees. It is similar to the general industry rule at § 1910.146(c). The corresponding requirements in the proposed rule also were similar to the requirements in this final rule, but this final rule organizes the requirements differently.

Paragraph (a). Final § 1926.1203(a) is similar to the corresponding provision for general industry confined spaces at § 1910.146(c)(1), with some minor modifications. Final § 1926.1203(a) requires an employer to have a competent person evaluate the spaces in which employees it directs may work, and requires a two-step process for the evaluation: (1) The competent person must evaluate whether a space meets the definition of a confined space, and if so, (2) the competent person must identify, in accordance with other

[12] OSHA did not include a definition of ''tagout'' in the NPRM, though the preamble noted the Agency's intent that ''appropriate lockout/tagout procedures'' were required for isolation of physical hazards (72 FR 67386). As explained earlier in this preamble, OSHA is tailoring the final rule to follow the general industry rule more closely in response to numerous requests by commenters. If OSHA had allowed the use of tags without more, it would have been a key distinction from the general industry standard and would have allowed employers to circumvent most of the permit-space requirements involving physical hazards.

provisions of this final rule, any confined spaces that are PRCSs through consideration and evaluation of the space, including testing of the space as necessary. The final construction rule specifies both the two-step approach and the competent-person requirement more explicitly than in the general industry standard.

OSHA added the competent-person requirement in response to several comments noting that the analysis required for these evaluations necessitated some level of expertise. (See ID–025, p. 2; –028, p. 4; –095, p. 2; –097, p. 3; –140, p. 3; –150, p. 2.) A ''competent person,'' which § 1926.1202 defines under this standard, must be capable of identifying the hazards of permit spaces and have the authority to eliminate them promptly. Because final § 1926.1203(a) requires the competent person to conduct initial testing as necessary, the competent person also must be knowledgeable about appropriate testing. The correct initial identification of permit spaces is an important part of preventing unauthorized entry into those spaces and ensuring that authorized entrants have adequate protection.

As discussed in the explanation of the definition of ''entry employer,'' each employer has a responsibility to protect all the employees that it directs, including employees hired directly by that employer as well as other employees, such as temporary workers, who are under its the control at the worksite. Thus, each employer who directs a temporary worker to a work area must ensure that a competent person evaluates that area for confined spaces and permit spaces.

Final § 1926.1203(a) also differs from the general industry rule in that it explicitly specifies that the competent person must identify confined and permit spaces through consideration and evaluation of other elements of the confined space, and testing as necessary. The atmospheric-testing requirement in this final rule is less specific than the atmospheric-testing requirement in proposed § 1926.1204(b), which would have required employers to test for atmospheric hazards using the procedures in proposed § 1926.1204(b)(3). However, final § 1926.1203(a) is more specific than the corresponding provision in the general industry rule, which states that employers must ''evaluate the workplace'' to determine if any spaces are permit-required spaces. Accordingly, this final provision explicitly requires testing if necessary to assess whether a confined space is a permit-required confined space.

The testing required by final § 1926.1203(a) is only initial testing; final § 1926.1204(b) addresses the detailed evaluation and identification of hazards found within the space (see discussion later in this preamble). The primary purpose of the assessment required by § 1926.1203(a) is to determine whether the space is a permit space so that this information can be conveyed to employees, the controlling contractor, and other employers at the site in order to prohibit unauthorized entry. In some cases employers may discover that the space is a permit space after only limited testing and decide not to allow their employees to enter the space at that point rather than fully assessing the space. Employers who intend to enter, however, may choose to conduct more thorough testing that satisfies the requirements of both § 1926.1203(a) and § 1926.1204(b) at the same time, so long as it does not delay their notification of their employees and the controlling contractor of the existence of the permit space.

Final § 1926.1203(a) also requires the competent person to consider and evaluate other elements of the confined space to determine if it is a permit-required confined space. Such elements include the configuration of the space and any physical hazards or obstacles to egress from the space. Both the testing and consideration of the space are essential in making an initial determination whether a confined space is a permit-required space; the Agency believes that requiring these basic steps will ensure that employers correctly identify PRCSs.

OSHA determined that employers must identify confined spaces that meet the definition of a permit space at the time their work begins on a worksite rather than when an employer decides that employees will enter a confined space. The Agency believes that the initial workplace survey is essential because it alerts employers to the need to take measures to prevent unauthorized entry into these spaces. OSHA further notes that while it may not always be feasible for employers to create and follow a full permit program before assessing an previously unexplored confined space, when it is feasible employers must treat any entry into a confined space as if the space was a permit space and eliminate or isolate the hazards before entry (see § 1926.1203(d) and (g)(2); § 1926.1204(b)(2)). This applies to entries performed to determine whether or not that space is a permit space.

Final § 1926.1203(a) states that there are two steps to be followed. The first step in the evaluation process is to determine whether a space meets the definition of a confined space. If the employer determines that there is a confined space on the worksite, the second step requires the employer to evaluate, in accordance with other provisions of this final rule, whether there are any actual or potential hazards in the confined space. Actual or potential hazards the employer must consider include atmospheric, engulfment, physical, or any other type of hazard. Both stages of the initial evaluation are crucial, as correctly identifying both confined spaces and the conditions or potential conditions that would make a confined space a permit-required confined space determines how the employer and employees will perform in and around the space thereafter. Though the general industry rule at § 1910.146(c)(1) does not explicitly identify the two steps, they are implicit in § 1910.146(c)(1) because an employer cannot evaluate the hazards of a confined space without first evaluating whether there are confined spaces on the worksite, as well as the location of these confined spaces. This clarification that an employer must first consider whether there are confined spaces at a worksite also was in proposed § 1926.1204(b). The Agency believes that making this requirement explicit is necessary to ensure that employers correctly assess the spaces so that they can adequately protect employees from the hazards present in the confined spaces.

One commenter requested that OSHA clarify which employer has the responsibility to evaluate hazards in confined spaces (ID–086, p. 4). Final § 1926.1203(a) clarifies the requirement by specifying that each employer that directs employees who *may* work in a confined space must perform the requisite evaluation. As in both the general industry standard and the proposed rule, this evaluation provision applies to a group of employers larger than just entry employers. The general industry standard requires each employer to evaluate the workspace and determine if any confined spaces are permit spaces (§ 1910.146(c)(1)). On a construction worksite, there typically are many more employers than at general industry worksites. Therefore, under final § 1926.1203(a), each employer that directs employees who may work in a confined space must identify all such spaces, and also identify each space that is a permit space. The term ''may work'' means that this requirement applies to any employer (not just entry employers) at a construction worksite who should

reasonably anticipate employee exposure to confined spaces; the focus is on whether the employee might enter the space, with the assumption that entry would constitute ''work.'' Accordingly, these employers must determine whether employees they direct could foreseeably work in areas at a worksite having confined spaces and whether any of these confined spaces are permit spaces.

Employers may cooperate in identifying the confined spaces and permit-required confined spaces on a worksite, but each employer remains responsible for identifying spaces that could affect employees it directs, including temporary workers. For example, several different employers could work with a single competent person designated by one of them, or by the controlling contractor, to identify the confined and permit spaces on a site, but each employer must still ensure compliance with the requirements of this standard.

The commenter who requested clarification about evaluating hazards also asked why the controlling contractor or host employer did not have the responsibility to evaluate the confined spaces, and asserted that entry employers did not have the information necessary to classify a space (ID–086, p. 4). The final rule follows the general industry standard, which assigns employers the responsibility to evaluate the spaces, and it is appropriate that the employers who direct employees who may be exposed to the hazards of permit spaces are responsible for classifying the space. Further, prior to entry into a permit space, controlling contractors and entry employers have duties under final §§ 1926.1203(h) and (i) to exchange information about the permit space.

Some commenters also suggested requiring a competent person to perform additional duties specified by this standard, such as monitoring or calibration of equipment (ID–025, p. 3; –028, pp. 3–4; –150, p. 2). However, final § 1926.1204(h) requires employers to properly train employees who perform these duties during entry operations. This final standard also includes training and knowledge requirements for entry supervisors, attendants, and other specific positions set forth in this standard to ensure that the employees filling those positions have the knowledge and capabilities to perform the specified duties once a permit space is identified (see final §§ 1926.1207–1210). The initial evaluation of spaces under final § 1926.1203(a) includes a competent-person requirement because of the critical need to identify confined and permit spaces early in the work at the site, and because the requirement to evaluate spaces also applies to employers who are not entry employers and who are, thus, not covered under the permit-space requirements of this final rule.

One commenter suggested that OSHA add a note in the standard to inform the regulated community that Material Safety Data sheets (now called Safety Data sheets) may be helpful in evaluating confined space hazards (ID–140, p. 4). OSHA agrees that this is useful information, but observes that a note under the definition of ''hazardous atmosphere'' in final § 1926.1202 provides similar information and achieves the commenter's stated result.

The same commenter also expressed concern that an employer, when identifying confined space hazards, does not have to consider the work it plans on performing inside the confined space, which may create a hazard (*e.g.,* welding or painting) (ID–140, p. 5). The commenter based this assertion on proposed § 1926.1204(b)(1), which provided that an employer must identify confined space hazards without entering the space and, thus, without first performing the work that could potentially create a hazard. OSHA drafted final § 1926.1203(a) broadly, so it is not as specific as proposed § 1926.1204(b)(1). An employer who is planning to conduct entry operations must develop and implement a written permit-space program under final rule § 1926.1203(d). Furthermore, under final § 1926.1205(c)(1), these employers must specify acceptable entry conditions. Taken together, these provisions require an employer that will conduct entry operations to consider the work it is planning to perform and the hazards that may result from this work when conducting the initial evaluation under final § 1926.1203(a).

One commenter asserted that the proposed prohibition on the use of mechanical ventilation or changing the space's natural ventilation during atmospheric testing would make some confined space work dangerous (ID–077, p. 1). This commenter asserted that when an employer is performing abrasive blasting on a tank interior, it is unsafe to perform the abrasive blasting with the dust collector turned off just to get a baseline reading. This commenter misunderstands the purpose of this requirement. Under final § 1926.1203(a), an employer's evaluation is the first step for any confined space work. This evaluation must occur before the employer performs either ventilation or construction in the confined space (see § 1203(a) and § 1204(e)(1) (allows an exception for spaces where it is infeasible to isolate the space). Only after the employer completes this initial evaluation, and the other required steps of its permit-space program, may it perform the construction work permitted under the rest of this final rule (*e.g.,* abrasive blasting with the dust collector turned on); however, the employer must consider this work and the types of hazards it might create when conducting the initial evaluation and when developing its permit-space program.

Paragraph (b). Final § 1926.1203(b) requires an employer that identifies one or more permit spaces on a worksite to inform exposed employees, employees' authorized representatives, and controlling contractors of the existence and location of those permit spaces and the known dangers inside. This duty applies to the employer that identifies a permit space under final § 1926.1203(a), as opposed to the general industry language, which refers to ''the employer.'' One of the keys to protecting employees from PRCS hazards is for both employers and employees to know the location of the PRCSs at the job site, the characteristics of the hazards, and their associated dangers. The provisions in this paragraph will achieve this goal.

The introductory language in paragraph (b) follows the general industry standard except that the new rule specifies that the employer's duty is triggered when the workplace has ''one or more'' permit spaces, whereas the general industry standard just refers to ''spaces'' in the plural. A single permit space triggers the employer's duty under both the general industry standard and this final rule, and OSHA is making this point explicit in the new rule.

Paragraph (b)(1). Final § 1926.1203(b)(1) requires the employer to inform exposed employees of the existence and location of, and the danger posed by, the permit spaces by posting danger signs or by any other equally effective means. Final § 1926.1203(b)(1) is similar to both the general industry rule at § 1910.146(c)(2) and proposed § 1926.1209(a)(2). As OSHA noted in the preamble to the general industry standard, many confined space accidents occur when an employee fails to recognize the hazards present when entering a permit-required confined space that the employer failed to mark as such. (58 FR 4462, 4483 (Dec. 17, 1993)). Therefore, OSHA determined that it is important to identify permit spaces and to inform exposed employees of their presence and the hazards involved. The Agency believes that employees need this information to

understand the seriousness of potential hazards in PRCSs. To recognize all methods of informing employees and to clarify the purpose of the rule, OSHA is adopting a performance-oriented requirement in the final rule. Accordingly, the employer must post a danger sign at or near PRCS entrances, which the Agency believes is an effective way to ensure that employees receive proper warning of the hazards in a PRCS, or adequately inform exposed employees through another equally effective means. Compliance with this requirement will ensure that exposed employees who are not authorized entrants receive the information necessary to prevent them from entering the spaces. Whatever method the employer uses, the standard requires the employer to inform employees exposed to the hazards posed by permit-required confined spaces of the existence, location, and danger of those spaces. Everyone at the construction site benefits from this information even if they do not engage in construction activity (*e.g.,* designers or architects).

However, OSHA notes that only employees who work in PRCSs need to know the details about the potential hazards. Final § 1926.1205(c) provides that employers post the entry permit, which contains information about the hazards of the PRCS and the measures used to address those hazards, at the entry portal or make this information available by any other equally effective means at the time of entry. Final § 1926.1212 provides that employers must make available to each affected employee and his/her authorized representatives all information required by this standard. Therefore, final § 1926.1203(b) does not require employers to list specific PRCS hazards on each sign.

In enforcing this provision, OSHA will make determinations about whether methods other than warning signs used by employers to notify employees about the spaces are truly as effective in imparting the required information to employees. Such methods must go beyond just the generic training required by this standard, for example, since generic training would not identify the location of permit spaces at a specific worksite. Therefore, an equally effective means would identify the PRCS locations so that employees at the job site who may work near the PRCSs would be aware of these locations and would understand the importance of not entering them. The final rule places on employers, not employees, the burden of using an effective means of identifying the spaces and controlling the associated hazards.

If an employer uses a warning sign, the sign must convey that entering the space is dangerous and that only authorized employees may enter the space. In this final provision, OSHA included the note from § 1910.146(c)(2) that a sign reading ''DANGER—PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER'' or similar language would satisfy the requirement for a sign.[13] This language is familiar to employers and employees under the general industry standard, and is a clear warning not to enter the space. The Agency believes that, when properly warned, employees who are not authorized to enter the space would avoid entering the PRCS, thereby preventing harm that could result from the PRCS hazards.

Proposed § 1926.1209(a) specified a two-step process that involved notifying employees who would be in or near the permit space, and then posting a sign. One commenter asserted that limiting notification to employees who the entry employer anticipates will be in or near the PRCS, as provided in proposed § 1926.1209(a)(1), would allow entry employers to avoid this requirement by claiming they did not anticipate a particular employee was going to be in or near the PRCS (ID–086, p. 5). Final § 1926.1203(b)(1) requires notification to exposed employees, which addresses this commenter's concern.

Other commenters argued that notifying employees near a PRCS, or employees on the jobsite, was burdensome, and that posting a warning sign would be sufficient to notify employees of the PRCSs and their hazards (ID–124, pp. 6–7; ID–133, p. 2). At least one other commenter argued that the barriers required by proposed § 1926.1209(b) would not always be feasible, and that posting warning signs would be sufficient (ID–104, p. 3). OSHA agrees with these commenters, and drafted final § 1926.1203(b)(1) to specify that notification by posting a warning sign would provide adequate notice to employees of the existence, location, and hazards of the PRCSs.

Another commenter was unsure whether the posting requirement applies when employers physically barricade the space (ID–099, p. 3). It does. Final § 1926.1203(b)(1) requires posting a warning sign or using another equally effective means of informing exposed employer about the hazards of the permit space, and final § 1926.1203(c) requires an employer to comply with final § 1926.1203(b)(1) when the employer prohibits entry into a confined space. Barricading the confined space in a manner that prevents easy entry by unauthorized employees (for example, by using a barricade that requires a key to gain entry) would be an equally effective means of informing employees under § 1926.1203(b)(1), provided the employer ensures that all affected employees receive information about such spaces and know that they must not enter the spaces without authorization and without taking proper precautions This means of compliance is consistent with the general industry standard. See OSHA Directive CPL 02–00–100: Application of the Permit-Required Confined Spaces (PRCS) Standard, Appendix E, Section (c)(4), and July 22, 1998, letter to Mr. Black.

This commenter, as well as another, asked which employer has the responsibility to post the warning sign if the space is a pre-existing one or there are multiple entry employers (ID–099, p. 3; –133, p. 2). Each employer that identifies that space, or receives notice of it, has a duty to inform exposed employees about a permit space (see § 1926.1203(b) and (c)). Each employer also has a responsibility to identify permit spaces in which one or more of employees it directs may work (see § 1926.1203(a)). However, if there already is a warning sign posted at the permit space, then the employer does not need to post an additional sign. Rather, an employer that relies on a preexisting sign to identify a space must ensure that the sign remains posted for the duration of the potential exposure to the permit space of employees it directs.

One of those commenters also asserted that the controlling contractor or host employer should post the warning sign because of their responsibility to ensure safe confined space entry operations. Final § 1926.1203(b)(1) requires the ''employer who identifies a permit space'' to post the warning sign. For the purposes of this standard, such employers include the controlling contractor, the host employer, and the entry employer if these employers have employees who could be exposed to permit-space hazards. The standard merely requires that an employer post the sign, thereby retaining flexibility among these entities to determine which employer is in the best position to post the sign. When multiple employers will be working in the same space, each employer has a separate duty to post the warning sign. If an employer decides to enter the space, then this subject must be resolved between the controlling contractor and the entry employers as part of the coordination discussion required by final § 1926.1203(h)(4).

[13] OSHA's requirements for accident prevention signs in § 1926.200 also apply.

Paragraph (b)(2). Final § 1926.1203(b)(2) requires each employer to notify its employees' representatives and the controlling contractor, in a manner other than posting, of the hazards of permit spaces and the location of those spaces. This requirement follows proposed § 1926.1209(a)(1). The primary purpose of this provision is to ensure that the employer who identifies a permit space conveys the location and general characteristics of the space to the designated recipients as soon as possible. Later, in accordance with § 1926.1203(h)(3), the entry employer must provide to the controlling contractor a more thorough assessment of the space, the hazards it expects to encounter, and the permit program measures it intends to use to address those hazards. It is important for employers to provide the controlling contractor with this information because the controlling contractor is in the best position to convey the employer's information to other employers at the site, and later share this information with entry employers under final § 1926.1203(h). Final § 1926.1203(b)(2) is also important because it applies to employers who identify a permit space, even if they choose not to allow their employees to enter it, thereby ensuring that the location of all permit spaces will be conveyed to the controlling contractor. Otherwise, the information exchange in § 1926.1203(h)(3) would only apply if the employer chooses to enter the space and become an ''entry employer.''

One commenter questioned the necessity of notifying authorized representatives, particularly if no such representatives are on the project site (ID–099, p. 2). Both the general industry standard and this final standard typically require information sharing between employers and employees and the employees' authorized representatives (see, *e.g.,* § 1910.146(l) and the discussion of § 1926.1212 later in this document). OSHA believes that notifying employees and their authorized representatives of the presence of confined spaces on a worksite will contribute to the successful implementation of safe entry operations, and the prevention of unauthorized entry, by ensuring that they have knowledge of the hazards present in the confined space. Sharing this information with employees' authorized representatives provides an additional way to ensure that this information reaches the employer's employees, and alerts the authorized representatives that there is the potential for permit entry operations. Final § 1926.1203(b)(2) also will facilitate the effective sharing of this important information among other employers at the site whose activities may impact the PRCS, as well as the employees of those other employers.

In some cases, an authorized representative of employees may have more extensive knowledge than the employee about particular hazards, or may be in a better position than the employee to assess the safety of the project site based on past experience at similar sites; therefore, OSHA sees no reason to deviate from the accepted general industry practice of information sharing with the employee's authorized representatives. Final § 1926.1203(b)(2) limits this notification requirement to only the representatives of the employer's employees. Also, while employers must notify these representatives in a timely manner to ensure that the information is available to the employee representatives and controlling contractor in sufficient time for it to be useful, this notification may be by any means normally used for communication with the employee representative or agreed upon in advance, including telephonic or electronic communication. If there are no authorized representatives of employees, the employer must still notify employees under final § 1926.1203(b)(1), and the controlling contractor under final § 1926.1203(b)(2).

Another commenter asserted that notifying the controlling contractor of the existence of every PRCS was unnecessary because posting would provide adequate notification (ID–090, p. 2). With respect to employees exposed to confined space hazards, OSHA agrees with this commenter that posting will provide these employees with adequate notification because of the proximity of the danger sign to the PRCS. Therefore, final § 1926.1203(b)(1) requires only posting to notify employees of confined space hazards, similar to the general industry standard at § 1910.146(c)(2). However, with respect to the controlling contractor and the employees' authorized representatives, a separate notification requirement is necessary to ensure a timely and efficient information exchange, rather than relying on the controlling contractor and employees' authorized representatives to explore the worksite and discover each danger sign.

Paragraph (c). Final § 1926.1203(c), which is similar to § 1910.146(c)(3), requires an employer that identifies, or has notification of, a permit space to take measures that are effective in prohibiting entry when that employer decides employees it directs will not enter permit spaces, and to comply with the rest of the standard as applicable. This provision applies to all employers that: Identify permit spaces under final § 1926.1203(a); receive notification from the controlling contractor of the presence of a permit space under final § 1926.1203(h)(2); receive notification of the permit space from a danger sign posted at a permit space; or receive notification of the permit space from any other means. While proposed § 1926.1209(b) required employers not conducting confined space operations to take specific steps to prohibit entry by employees, final § 1926.1203(c) follows the performance-oriented language of the general industry rule.

The effective measures to prohibit entry could include permanently closing the space and providing barriers, supplemented by training employees and the posted danger signs required under § 1926.1203(b). In any event, the steps taken by the employer must be effective in preventing employee entry into permit spaces. In OSHA's experience, posting signs without barriers is generally less effective than with barriers, so employers who choose the former method must take special care to ensure that employees they direct recognize and understand permit-space warning signs, that they are knowledgeable regarding the hazards associated with these spaces, and that they understand that entry into the spaces is not authorized. This reinforces the employer's existing obligation under § 1926.21(b)(2) to instruct each employee in the recognition and avoidance of unsafe conditions. OSHA believes that these provisions in the final rule will protect employees from unauthorized entry into permit spaces.

Final § 1926.1203(c) also requires employers covered by this provision to comply with the rest of the confined spaces in construction standard, as applicable. The parallel provision in the general industry standard requires employers to comply with specific provisions of that standard, which correspond to the following provisions in this final rule: § 1926.1203(a), relating to identification of permit spaces in the workplace; § 1926.1203(b)(1), relating to informing employees of the presence of permit spaces; § 1926.1203(f), relating to changes in confined spaces; and § 1926.1203(h), relating to the controlling contractor's information exchange with employers. Employers must comply with those provisions that are applicable. For example, under final § 1926.1203(h)(2) and (h)(4), controlling contractors must inform and coordinate

with employers that direct employees (including employees not involved directly in the confined space operations) whose activities could, either alone or in conjunction with the activities performed in the confined space, foreseeably result in a hazard to employees in the confined space. Additional provisions of this standard may apply as well, depending on the activities of the employer in question. For these reasons, in final § 1926.1203(c), OSHA used the general language ''all other applicable requirements'' rather than specifying different sections of the final standard that may be applicable.

Paragraph (d). Final § 1926.1203(d) requires any employer that has employees who will enter a confined space to have and implement a written permit-space program that meets the requirements of this final standard, and to make the program available for inspection by employees and their representatives. Final § 1926.1203(d) is similar to the corresponding provision for general industry confined spaces at § 1910.146(c)(4), with slight modifications. OSHA modified the language of this final provision slightly to clarify that entry employers do not necessarily have to develop a separate written program for each individual entry. Rather, an entry employer may reuse a program it developed previously, or a program developed by another employer, an industry association, or other entity, so long as the program is appropriate for the specific entry operations and the type of work involved, and that the program meets the requirements set forth in final § 1926.1204. OSHA anticipates that in most cases employers will be able to use or modify an existing program and will not need to develop an entirely new program.

Although the final rule requires the permit program to meet the requirements of final § 1926.1204, OSHA will allow employers to fulfill this obligation through a combination of the permit program and the entry permit itself. In a 2006 interpretation of the general industry standard, the Agency noted that employers could use the same permit program to cover multiple spaces:

> If employees will enter a permit space, an employer must develop and implement the means, procedures and practices necessary for safe permit space entry operations in accordance with § 1910.146(d)(3). Before a specific permit space is entered, the employer must document the completion of the measures required by § 1910.146(d)(3) by preparing an entry permit. A specific permit must be completed prior to each entry. However, if there are several similar tanks, with the same conditions and hazards, the same means, procedures and practices could be used for this similar group of tanks.

September 21, 2006, letter to Fred Rubel. OSHA anticipates that, in practice, some employers in construction may operate with a general permit-space program that covers numerous types of permit spaces and hazards, along with a specific permit that includes the unique hazards and practices applicable to each of those spaces. The Agency has no objection to this approach, provided the permit conveys all of the applicable information to employees at the required times, this information is readily available to the employees for reference during entry operations, and employees receive the training necessary for them to refer to the appropriate document for the required information. Therefore, for this purpose, OSHA allows employers to treat the permit as part of the written permit space program required by this section.

The proposed rule did not require an employer to have a written confined space program. Instead, in proposed § 1926.1219(a), the proposed rule provided that the employer could keep either a copy of the standard on the worksite or a copy of a program that incorporated the requirements of the standard. At least one commenter recommended that OSHA revise proposed § 1926.1219(a) so that the provision required employers to have a written copy of the final rule on site, regardless of whether the employer had a written copy of its confined spaces program (ID–108, p. 4). Several other commenters disagreed with OSHA's approach in the proposal, and urged OSHA to require a written confined space program as the general industry standard does. One commenter stated, ''For a confined space program to be effective, it must be easy to understand and implement. . . . Providing employees with the generic terms of the standard—even if they read it—would not provide that kind of clarity. Instead, they need information specific to working at the particular worksite [which a program provides]'' (ID–220, p. 28–29). Another commenter asserted, ''Having a written program gives everyone a clear idea of what is required and their roles and responsibilities. It also is an important reference document. Construction contractors commonly have written safety programs, and many already have written confined space programs as well, so compliance should not be difficult'' (ID–150, p. 3). Another commenter asserted that the written program in the general industry standard contributed to employee safety, and that the lack of a written program in the proposal diminished employee safety and also weakened training because ''the vision of what is expected can not be focused'' (ID–129, p. 3). A different commenter stated that requiring a written plan was the most important provision of the standard because it ensures that employers plan the permit space entry carefully and are familiar with the hazard analysis; it also provides an important reference document (ID–130, p. 1). The latter two commenters also noted that the lack of a written program in the proposal was a step backwards from the general industry rule.

OSHA wrote this final standard in performance-based language to be consistent with the general industry rule; consequently, this final standard does not provide the specific classification system and detailed step-by-step procedures for employers to follow found in the proposed rule. Therefore, this final rule is less suitable as a replacement for a written permit program than was the proposed rule. Accordingly, OSHA does not believe that maintaining a copy of this final rule on site, in lieu of having a written permit-space program, will ensure that an employer's confined space procedures will provide adequate employee protection. OSHA agrees with the commenters who supported a written program.

The Agency believes that final § 1926.1203(d) will effectively prevent unauthorized entry into PRCSs, and so protect employees from encountering PRCS hazards. The Agency also believes that it is necessary for employers to have a written confined space program at the worksite as a reference for employees involved in implementing safe entry procedures. A written program provides the basis for any permit-space entry operation, as well as a reference for guiding and directing supervisors and employees alike. A written program also will serve to assign accountability for all functions related to permit-space entry, and will aid in avoiding mistakes and misunderstandings. Additionally, because of the compliance flexibility and discretion that the standard provides to the employer, a written plan is essential to demonstrate that the employer took all aspects of permit-space entry into consideration. For these reasons, OSHA decided to specify in the final rule that the permit-space program be in writing. The written plan must, in combination with the permit itself, address the employer's particular facts

and circumstances to ensure that the procedures will protect employees' safety. For all of the reasons above, requiring an employer to have and implement a written permit-space program, rather than simply relying on a copy this final rule, will enhance the protection afforded to employees from confined space hazards.

Final § 1926.1203(d) explicitly requires employers to implement their written permit-space program at the jobsite. A program that is drafted but not implemented at the jobsite will not protect employees from the hazards of permit-space entry. This requirement is implicit in the general industry standard, but OSHA has made it explicit in this final rule. Additionally, this final provision requires employers to make the written program available for inspection by employees and their authorized representatives. The Agency believes that such access is essential for the successful implementation of a permit-space entry program. Finally, final § 1926.1203(d) clarifies that the employer must make the program available to employees prior to, and during, entry operations, which are the periods that the written program is most important. During these periods, employees must understand the program to ensure their safety. The general industry rule requires that the program be available, and this final rule simply clarifies that it must be available during these critical periods.

Paragraph (e). Final § 1926.1203(e) authorizes an employer to use alternate procedures for permit-space operations under limited circumstances. The standard permits these alternative procedures when an employer can demonstrate that it eliminated or isolated all physical hazards through engineering controls and controls atmospheric hazards through continuous forced-air ventilation. OSHA notes that continuous ventilation is a control method, and not a method suitable for eliminating or isolating an atmospheric hazard, so final § 1926.1203(e) spaces remain permit-required spaces, but can be entered without a permit program under the alternate procedures specified in this final section. OSHA believes that in the context of construction work, these alternative procedures provide adequate safety measures while being more efficient, and less costly to implement, than complying with the full permit-program requirements specified by final rule § 1926.1204. The requirements for the alternate procedures allowed under the final construction rule are similar to the corresponding provisions of the general industry confined spaces standard at § 1910.146(c)(5), but contain some substantive modifications explained in the following paragraphs. OSHA also added the word ''only'' to the introductory provision to clarify that an employer cannot use these alternate procedures under any other circumstances. In addition, final § 1926.1203(e) is similar to proposed § 1926.1216.

Paragraph (e)(1). Final § 1926.1203(e)(1), which is substantively identical to § 1910.146(c)(5)(i), sets forth the six conditions that an employer must meet before employees can enter a permit space under the alternative procedures specified in paragraph (e)(2). OSHA modified final § 1926.1203(e)(1) slightly from the general industry rule to state explicitly that employers must meet *all* of the conditions listed in final § 1926.1203(e)(1) before using the alternate procedures specified by final § 1926.1203(e). If employers meet all of these conditions, the employer need not comply with final §§ 1926.1204–1206 (addressing permits and permit programs) or final §§ 1926.1208–1211 (setting forth specific duties for permit-required confined spaces). Employers in permit spaces qualified to use the alternate procedures, however, still must comply with final § 1926.1207 (training requirements), final §§ 1926.1212–1213 (Employee participation and provision of documents to the Secretary), and the other provisions of final § 1926.1203, including the information exchange requirements in final § 1926.1203(h).

One commenter asserted that any space that requires ventilation to protect employees should have an attendant to monitor conditions in the space (ID–060, p. 3). The general industry standard does not require an attendant for entry under its parallel alternative entry procedures, and OSHA disagrees with this commenter, who offered no explanation for this assertion. Employers are only eligible to use the alternate procedures in final § 1926.1203(e) when the employer can demonstrate that the only hazard posed by the permit space is an actual or potential hazardous atmosphere, can demonstrate that continuous forced-air ventilation alone provides adequate safety, and the employer continuously monitors the space during entry. These requirements make the eligible spaces safe for employee entry. The more extensive requirements of final § 1926.1204 apply to those permit spaces with hazards that employers cannot isolate by engineering controls, or that the employer cannot control by ventilation. The Agency notes that the alternative entry procedures are only available for as long as the physical hazards remain isolated and the atmospheric hazards controlled. Employers must take care to ensure that physical hazards remain isolated and must exit the space and implement a full permit program if there is any indication that workers might be exposed.

Another commenter requested that the final rule clarify that employers need not provide attendants and rescue services for final § 1926.1203(e) spaces (ID–099, p. 3). Final § 1926.1203(e)(1) clarifies that spaces qualifying for the alternate procedures under § 1926.1203(e) do not need to comply with final §§ 1926.1204–1206 (addressing permits and permit programs) and §§ 1926.1208–1211 (setting forth specific duties for permit-required confined spaces).

Paragraph (e)(1)(i). Final § 1926.1203(e)(1)(i), which is similar to the general industry standard at § 1910.146(c)(5)(i)(A), sets out the first condition that employers must meet before using the alternative procedures. It provides that an employer may use these alternate procedures only when the employer can demonstrate that it eliminated or isolated all physical hazards using engineering controls, and that the only hazard posed by the space is an actual or potential hazardous atmosphere. OSHA modified this provision from the general industry rule by adding language that an employer can use the alternative procedures when it can demonstrate that all physical hazards are ''eliminated or isolated'' by engineering controls within a confined space, rather than just ''eliminated.'' OSHA adopted this change from proposed § 1926.1216(a), which provided that employers could use the equivalent provisions when they could demonstrate the isolation of physical hazards.

One commenter supported the proposed rule's provisions for entry into ''controlled-atmosphere confined spaces'' in proposed § 1926.1216, which the commenter described as requiring the elimination of all physical hazards (ID–220, p. 6). Proposed § 1926.1216 did not, however, specify that physical hazards must be eliminated before an employer could use the alternative ventilation-only procedures in that section; it required the employer to ''determine and implement an isolation method'' for each of the physical hazards identified (see proposed § 1926.1216(a)(1); see also proposed § 1926.1216(a)(3), which required the documentation of the method for ''isolating'' each physical hazard). The

final rule, which defines ''isolate or isolation'' in final § 1926.1202 to allow employers to isolate physical hazards within a confined space like the proposed rule, and provides for isolation using the same methods specified in the proposed definition, which include the elimination or removal of hazards. (See the discussion of this definition earlier in this preamble.)

Another commenter expressed concern that, in construction work, employers would almost never be able to use these alternate procedures because the complete elimination of all physical hazards, such as an iron angle at head level, from such a space would, in many cases, not be feasible or necessary (ID–061, p. 6). OSHA believes that isolating physical hazards using methods such as wrapping a low-hanging pipe with foam or locking out pieces of equipment (see the definition of ''isolate or isolation'' in final § 1926.1202) can be sufficient to prevent injury from those hazards. Thus, the Agency decided that isolating or eliminating physical hazards is the most appropriate approach in the construction context where potentially isolated physical hazards are likely to be more prevalent because of the nature of construction, and adopted the proposed requirement accordingly.[14]

Paragraph (e)(1)(ii). Final § 1926.1203(e)(1)(ii), which corresponds to the general industry standard at § 1910.146(c)(5)(i)(B), sets out the second condition required for employees to use the alternative procedures: An employer must be able to demonstrate that continuous forced-air ventilation alone provides adequate safety from hazardous atmospheres and that entrants can safely exit the space in the event the ventilation system stops working. For the space to be safe under this final provision, the mechanical ventilation must control the hazardous atmosphere at levels that are below the levels at which they are harmful to entrants so that, if the ventilation shuts down for any reason (such as loss of power), the employees will have sufficient time to recognize the hazard and exit the space. Employers have a responsibility to specify a hazard level that is adequate for employees to escape the confined space before the hazard reaches unsafe levels. As with the general industry standard, employers must account for the introduction of additional hazards from the work conducted in the permit space, such as additional gases generated by painting or application of coating, and ensure that the ventilation is adequate to account for the introduced hazards (see 58 FR 4462, 4488 (Jan. 14, 1993)). In addition, certain types of work are inherently unsuitable for entries under § 1926.1203(e). In the preamble to § 1910.146(c)(5) of the general industry standard, OSHA explained that ''work with hazardous quantities of flammable or toxic substances and hot work are not permitted'' because they would ''introduce hazards beyond those accounted for by the determination that the permit space can be maintained safe for entry'' through mechanical ventilation alone (*id*). For the same reasons, OSHA does not permit this work for entries under § 1926.1203(e).

Final § 1926.1203(e)(1)(ii) also requires that the employer be able to demonstrate that in the event the ventilation system stops working, entrants can exit the space safely. OSHA based this requirement on proposed § 1926.1216(a)(2)(ii) which would have required employers to document their determination that monitoring procedures would give sufficient warning to allow entrants to exit. In the final rule, OSHA moved the monitoring requirement to 1926.1203(e)(2)(vi). However, the Agency retained the determination requirement in (e)(1)(ii) to make clear that safe exit time must be factored into the selection of monitoring procedures, intervals, and detection levels, including the levels at which monitoring alarms are triggered. Safe exit time is a precondition for reliance on alternative procedures.

One commenter asserted that determining what is a sufficient time to exit, as required by the proposed rule, would require an industrial hygienist (ID–114, p. 2). OSHA does not believe an industrial hygienist is the only person capable of making this determination because the final rule bases the time required for a safe exit on the physical attributes of the space. Any person trained in confined-space operations under final § 1926.1207 should be able to use these attributes to determine the time needed by entrants to safely exit the confined space as required by § 1926.1203(e)(1)(ii). For example, if the employer is unsure how quickly the atmosphere would return to a hazardous atmosphere following a ventilation failure, the employer can run a test by shutting off the ventilation when no one is in the space to determine the amount of time before the continuous monitor alarm sounds. The rest of the calculation would depend on the amount of time necessary for employees to exit the space from their work locations inside the permit space, which could also be tested, factoring in an appropriate safety buffer of time.

Several commenters asserted that OSHA should allow an employer to use natural ventilation alone, or suction, to control a hazard under the alternate procedures specified by final § 1926.1203(e). OSHA addressed these comments in the earlier discussion of the definition of ''ventilate or ventilation'' in this preamble.

There was a considerable amount of discussion in the record about whether the alternative procedures should be available for isolated spaces in sewers and other continuous spaces (see, *e.g.,* ID–75.1, p. 4; –210, Tr. pp. 176–177, 185–93, 206–208; –211, Tr. pp. 144–159). For an employer to apply final § 1926.1203(e) to a sewer, the employer would have to demonstrate total isolation of the section of the sewer from other potential sources of hazards (*e.g.,* the sewer distribution system) to guard against the introduction of new hazards into the space; the employer then must demonstrate that the ventilation system is maintaining the space sufficiently below the trigger limits for the atmospheric hazard (*e.g.,* below 10 percent LFL or an applicable PEL) so that employees would have time to escape if the ventilation failed. Total isolation of sewer manholes or selected sections of piping may not be practical or feasible to prevent hazards (*e.g.,* flammable gases) from entering the space because employers normally perform entries with the system in service. See Aug. 15, 1996, letter to Larry Brown. Final § 1926.1203(e)(1)(ii) includes a clear requirement that an employer that relies on continuous forced-air ventilation to maintain spaces safe for entry must be able to establish that other measures are not necessary to protect entrants. For additional information about isolating spaces within sewers and other continuous confined spaces, see the discussion of § 1926.1204(c)(3).

Paragraph (e)(1)(iii). Final § 1926.1203(e)(1)(iii), which is identical to the general industry standard at § 1910.146(c)(5)(i)(C), is the third condition required before an employer may use the alternative procedures. It also is substantively similar to proposed § 1926.1216(a)(2) and (a)(3), which provided that employers must test the atmosphere and document the results; this final provision, however, is less detailed than the proposed provisions. This final provision requires the

[14] The general industry standard does not allow employers to use the alternative entry procedures in § 1910.146(c)(5)(ii) if any physical hazard remains in the space, even if that hazard is temporarily ''removed'' or ''isolated'' in accordance with the standard. See October 12, 1995, memorandum to Linda Anku. OSHA does not adopt that interpretation for this construction rule.

employer to develop monitoring and inspection data that supports the demonstrations required by paragraphs (e)(1)(i) and (e)(1)(ii), *i.e.,* the elimination or isolation of physical hazards such that the only hazard in the space is an actual or potential hazardous atmosphere, and that continuous forced-air ventilation is sufficient to maintain the space safe for entry. The atmospheric-monitoring data must show that ventilation will keep the atmosphere inside the permit space safe for entry. In this context, the final rule uses ''monitoring'' to match the general industry language, but the term encompasses both the initial testing of atmosphere and the subsequent measurements. The data required by paragraph (e)(1)(iii) are essential for the employer and employees, as well as OSHA, to determine whether the employer can maintain the space safe for entry with the use of ventilation alone.

Paragraph (e)(1)(iv). Final § 1926.1203(e)(1)(iv), which is identical to the general industry standard at § 1910.146(c)(5)(i)(D), is the fourth criterion employers must meet to use the alternative procedures. This provision also is similar to proposed § 1926.1204(b)(2). This final provisions specifies that, if an initial entry into the permit space is necessary to obtain the data required by paragraph (e)(1)(iv), the employer must perform the entry in compliance with final §§ 1926.1204–1211 (*i.e.,* the full permit-space program).[15] This entry requirement, which was in the proposed rule, is necessary to protect employees from hazards that the employer did not fully identify or assess. The rule requires employers to obtain monitoring and inspection data without entry when feasible, but acknowledges that in many instances it will be necessary to perform an initial entry into the space to make the necessary determinations. This requirement will ensure that the initial entry is safe.

Paragraph (e)(1)(v). Final § 1926.1203(e)(1)(v), which is identical to the general industry standard at § 1910.146(c)(5)(i)(E), sets out the fifth criterion for using the alternate procedures. It also is similar to proposed § 1926.1216(a)(3), though less detailed. This final provision mandates that employers document the determinations and supporting data required by paragraphs (e)(1)(i) through (e)(1)(iii) of this final rule, and make this documentation available to employees who enter the spaces under the terms of final § 1926.1203(e), or to their authorized representatives. This documentation will enable the employer, employees, their authorized representatives, and OSHA to evaluate the validity of the determinations made under final § 1926.1203(e) for a particular permit space.

Paragraph (e)(1)(vi). Final § 1926.1203(e)(1)(vi), which is identical to the general industry standard at § 1910.146(c)(5)(i)(F), is the final condition that employers must meet to use the alternate procedures. The section does not correspond to any section of the proposed rule due to the different organization of the proposal. It requires that employers perform entry under the alternate procedures specified by final § 1926.1203(e) in accordance with the specific procedures required by final § 1926.1203(e)(2).

Paragraph (e)(2). Final § 1926.1203(e)(2), which is similar to § 1910.146(c)(5)(ii), sets forth the procedures that employers must follow for permit-space entries made under final § 1926.1203(e)(1). The introductory paragraph in § 1926.1203(e)(2) is identical to the introductory paragraph in the general industry standard. This introductory paragraph does not correspond to any section of the proposed rule due to the different organization of the proposal.

Paragraph (e)(2)(i). Final § 1926.1203(e)(2)(i), which is identical to the general industry standard at § 1910.146(c)(5)(ii)(A), requires that employers must, before removing an entrance cover, eliminate any conditions that make it unsafe to do so. It also is similar to proposed § 1926.1216(c)(1). Some conditions in a permit space may make it hazardous to remove a cover from the space. For example, if the atmospheric hazards within the space cause high pressure in the space, the cover may blow off in the process of removing it. To protect employees from such hazards, employers must make a determination as to whether it is safe to remove the cover. Such a determination requires the employer to examine the conditions expected to be in the permit space. Under high-pressure conditions, employers must check the cover to determine if it is hot; if so, the employer must loosen a cover fastened in place gradually to release any residual pressure. The employer also must determine whether conditions at the site could cause a hazardous atmosphere to accumulate in the space, which would make it unsafe for employees to remove the cover. The employer must not remove the cover until it is safe to do so.

Paragraph (e)(2)(ii). Final § 1926.1203(e)(2)(ii), which is nearly identical to the general industry standard at § 1910.146(c)(5)(ii)(B), requires employers to guard openings to permit spaces after removing entrance covers to protect employees from falling into the space and to protect employees in the permit space from injuries caused by objects entering the space. It also is similar to proposed § 1926.1216(c)(2), though less specific than the proposed provision. The guard could be in the form of a railing, a temporary cover, or any other temporary barrier that provides the required protection. If the opening to the space would not allow employees and objects to fall into the space, then no additional guarding is necessary. Final § 1926.1203(e)(2)(ii) differs from § 1910.146(c)(5)(ii)(B) in that it requires the opening to be ''immediately'' guarded by a railing, temporary cover, or other temporary barrier. The general industry rule requires employers to provide the guarding promptly. The Agency made this change to clarify that the guarding must happen as soon as possible.

Paragraph (e)(2)(iii). Final § 1926.1203(e)(2)(iii), which is substantively identical to the general industry standard at § 1910.146(c)(5)(ii)(C), requires the employer to test the internal atmosphere of the permit space with a calibrated, direct-reading instrument before any employee enters the space. This provision also is similar to proposed §§ 1926.1216(d)(2) and 1926.1205(a)(1), though not as detailed as the testing required by proposed § 1926.1205(a). If the employer can demonstrate that testing prior to entry is infeasible, then the employer must at a minimum comply with permit program requirements during the testing process in accordance with § 1926.1203(e)(1)(iv).

The employer must test the atmosphere, in sequence, for oxygen content, flammable gases and vapors, and potential toxic gases and vapors. Employers must first perform a test for oxygen because most combustible gas meters are oxygen dependent and will not provide reliable readings in an oxygen-deficient atmosphere. Employers must test for combustible

[15] OSHA recognizes that compliance with final § 1926.1204(e)(1) requires employers to test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin. An employer will be in compliance if the employer can demonstrate that initial entry is necessary to gather the data to comply with § 1926.1203(e)(1)(iii), and enters under a permit program that complies with all other provisions except the pre-entry testing in § 1926.1204(e)(1). Note that the alternative entry procedures are not available if the work space is part of a continuous system and has not been effectively isolated.

gases next because, in most cases, the threat of fire or explosion is both more immediate and more life threatening than exposure to toxic gases. The testing must be appropriate for the space; for example, if there is a stratified atmosphere where gases of different densities layer within a confined space, the employer must perform testing at different depths.

This testing is necessary to determine whether ventilation alone will maintain the space safe for entry. The results of this testing must be within the expected range for the space, based on the employer's determination under paragraph (e)(1)(ii), or the employer may not enter under the alternative procedure.

Paragraph (e)(2)(iv). Final § 1926.1203(e)(2)(iv), which is identical to the general industry standard at § 1910.146(c)(5)(ii)(D), prohibits employees from occupying the space when a hazardous atmosphere is present in the space. This provision has the same purpose as proposed § 1926.1216(e)(2)—namely, to ensure that there is no hazardous atmosphere in an alternate procedures space during entry. However, due to the different organization of the proposed and final rules, the language and organization of these two provisions are different. To ensure that there is no hazardous atmosphere in a permit space when an employer enters using the alternate procedures, final § 1926.1203(e)(2)(iv) requires employers conducting any entry into a permit space containing a hazardous atmosphere to comply with the full permit-space program requirements in final §§ 1926.1204–1211. See also the discussion of final § 1926.1203(e)(2)(vii)(A) below.

Paragraph (e)(2)(v). Final § 1926.1203(e)(2)(v), which is identical to the general industry standard at § 1910.146(c)(5)(ii)(E), sets out requirements for using continuous forced-air ventilation to maintain the permit space safe for entry. Final § 1926.1203(e)(2)(v)(A) also is identical to § 1910.146(c)(5)(ii)(E)(*1*) and similar to proposed § 1926.1216(d)(3). It requires that no employee may enter the space until the forced-air ventilation eliminates any hazardous atmosphere in the space. Final § 1926.1203(e)(2)(v)(B) is identical to § 1910.146(c)(5)(ii)(E)(*2*), and shares the purpose of proposed § 1926.1216(e)(2) to ensure that the ventilation will continue to control the atmospheric hazards while the employer is conducting entry operations. It requires the employer to direct the ventilation so as to ventilate the immediate areas where an employee is, or will be, present in the space, and requires the ventilation to continue until all employees leave the space. Final § 1926.1203(e)(2)(v)(C) is identical to § 1910.146(c)(5)(ii)(E)(*3*), and has no corresponding section in the proposed rule. It requires that the air supply for the ventilation must be from a clean source, and must not increase the hazards in the space. These provisions ensure that the atmosphere in the permit space will remain safe during the entire entry operation.

Paragraph (e)(2)(vi). Final § 1926.1203(e)(2)(vi), which is similar to the general industry standard at § 1910.146(c)(5)(ii)(F), requires entry employers to continuously monitor the atmosphere in the permit space. Employers may use periodic monitoring, rather than continuous monitoring, only if the employer can demonstrate that the equipment for continuous monitoring is not commercially available or that periodic monitoring is sufficient to ensure that the conditions in the PRCS remain within planned limits. This final provision also clarifies that employers must use some form of monitoring during confined space operations, and that they must use periodic monitoring if continuous monitoring is not used to ensure that there is always monitoring of the space occurring.

OSHA retained in this final rule the requirement in the proposal that employers use continuous monitoring (see proposed § 1926.1216(e)(2)). This requirement for continuous monitoring differs from the general industry rule, which requires ''periodic testing.'' In the typical PRCS found at construction sites, it is often difficult for the employer to predict with reasonable certainty the levels of hazardous atmospheres in a PRCS. In many instances, the employer will have little or no past experience with the particular PRCS, and will lack reliable historical data on hazardous atmosphere levels. Also, conditions in a PRCS may vary as construction work progresses, causing unexpected increases in hazardous atmosphere levels. For example, alterations to the wall of a PRCS may allow a hazardous gas to enter the PRCS, thereby increasing the level of the hazardous gas in the PRCS from the level measured before altering the wall. In addition, construction equipment in the space may not operate as expected, resulting in a discharge of hazardous gasses into the space at a higher rate than anticipated. In short, construction work tends to follow a somewhat unpredictable course and, thus, requires frequent atmospheric monitoring. Because of this high level of unpredictability, OSHA believes that continuous monitoring is necessary to ensure that affected employees, especially entrants, receive adequate protection. Continuous monitoring enables employers to quickly recognize deteriorating conditions, including the introduction of new atmospheric hazards into the confined space, and then to take timely actions to protect employees. For additional discussion of the need for continuous monitoring and its implementation, see the discussion of final § 1926.1204(e)(2) (discussion of continuous monitoring of permit spaces entered under a full permit program, rather than the alternative procedures).

Final § 1926.1203(e)(2)(vi) also requires the continuous-monitoring equipment to have a functional alarm that will notify all entrants when an atmospheric hazard reaches a specified threshold designed to give entrants an opportunity to escape before a ''hazardous atmosphere'' develops, or check the monitor with sufficient frequency to alert other entrants when an atmospheric hazard reaches that specified threshold. The purpose of continuous monitoring is to protect entrants by ensuring that the atmospheric hazards remain at or below levels specified by final § 1926.1203(e)(1)(ii), and having an alarm will immediately warn entrants when the atmospheric hazards reach those levels. The monitoring equipment serves no purpose if the employer does not convey the monitoring results to entrants in a timely manner. Requiring employers to check the monitor ''with sufficient frequency'' is a performance measure that means that the employer must demonstrate that the permit space is monitored such that a change in atmosphere or other potential hazard will be identified in time to allow entrants to exit the permit space safely. Checking the monitor regularly also will alert entrants if the monitor malfunctions.

Several commenters supported the requirement for continuous monitoring (ID–106, p. 2; –220, p. 7; –211, Tr. pp. 44–45). However, some of these commenters also urged the Agency to require continuous monitoring without exception (ID–106, p. 3; –220, p. 7). The Agency recognizes that in some PRCSs, especially when an employer conducts numerous entry operations in the same PRCS and finds through repeated monitoring that the atmosphere in the PRCS is stable, the employer may be able to show that periodic monitoring is sufficient to ensure that the conditions in the PRCS remain within planned limits. Nevertheless, when the employer uses periodic monitoring, it must be of sufficient frequency to ensure the

control of atmospheric hazards as planned and must be able to detect new hazards in time to protect employees. In some cases, continuous monitoring may not be possible; for example, continuous monitoring may not be available when the atmospheric hazard is a particulate. Therefore, when the employer shows that periodic monitoring is adequate, or demonstrates that the technology for continuous monitoring is not available, this final provision permits the employer to use effective periodic monitoring instead of continuous monitoring. The proposed rule contained the same exceptions.

The Agency also retained the language from the general industry rule that the monitoring must ensure that the continuous forced-air ventilation is preventing the accumulation of a hazardous atmosphere. The monitoring required by final § 1926.1203(e)(2)(vi), in combination with the continuous forced-air ventilation required by final § 1926.1203(e)(2)(v), ensure that entrants remain protected the entire time they are present within the permit space.

Finally, final § 1926.1203(e)(2)(vi) specifies that the employer must provide any entrant, or his or her authorized representative, with the opportunity to observe the monitoring required by this paragraph. This paragraph does not require employees and their authorized representatives to observe the monitoring; however, it provides employees and their authorized representatives with the option of observing should they choose to do so. OSHA believes that allowing employees and their authorized representatives to participate in this manner will contribute to the successful implementation of safe entry operations by enhancing their awareness of the status of the hazards in the confined space.

Paragraph (e)(2)(vii). Final § 1926.1203(e)(2)(vii), which is similar to the general industry standard at § 1910.146(c)(5)(ii)(G), specifies what an employer must do if it detects a hazard in a space regulated by the § 1926.1203(e) alternate procedures during entry. Final § 1926.1203(e)(2)(vii) differs from the general industry rule in that it expressly applies to any hazard, not just a hazardous atmosphere. This final provision is similar to proposed § 1926.1216(f), which also referred to physical, as well as atmospheric, hazards. The Agency made this change to ensure that this paragraph was consistent with final § 1926.1203(e)(1)(i), which allows employers to use the alternate procedures of final § 1926.1203(e) after eliminating or isolating all physical hazards in the space. Thus, the employer must implement the requirements of this final paragraph when there is a new physical hazard, a previously recognized physical hazard no longer remains isolated, or there is a hazardous atmosphere present.

Paragraphs (e)(2)(vii)(A)–(C). Final §§ 1926.1203(e)(2)(vii)(A)–(C), which are similar to general industry §§ 1910.146(c)(5)(ii)(G)(*1*)–(*3*), set the requirements for what an employer must do after detecting a hazard in a space regulated by § 1926.1203(e) during entry. Final § 1926.1203(e)(2)(vii)(A) is identical to the general industry standard at § 1910.146(c)(5)(ii)(G)(*1*), and requires employees to exit the permit space immediately after detecting a hazard. Final § 1926.1203(e)(2)(vii)(B) is similar to the general industry standard at § 1910.146(c)(5)(ii)(G)(*2*), except that it applies to all hazards, not just atmospheric hazards as the general industry requirement does. The final rule requires the employer to evaluate the permit space to determine how the hazard developed. Final § 1926.1203(e)(2)(vii)(C) is similar to the general industry standard at § 1910.146(c)(5)(ii)(G)(*3*), though it too refers to all hazards (physical and atmospheric). It requires the employer to implement measures to protect employees from the hazard before reentering the space under the alternate procedures specified by final § 1926.1203(e). Detecting a hazardous atmosphere during entry indicates that the employer did not maintain the permit space safe for entry, so before authorizing any subsequent entries into the space under final § 1926.1203(e), the employer must determine what went wrong and take whatever measures are necessary to prevent a recurrence.

Paragraph (e)(2)(viii). Final § 1926.1203(e)(2)(viii) requires an employer to provide a safe means of access and egress during confined space entries under final § 1926.1203(e). For example, when employees are working in an underground vault, the employer must provide, and ensure the use of, a safe means of entry into and exit from the underground vault, and ensure that the method complies with applicable OSHA requirements (*e.g.,* 29 CFR part 1926, subpart X—Stairways and Ladders). Providing proper entry and exit equipment such as ladders is critical under emergency-egress conditions to ensure that employees exit a PRCS in a timely and safe manner. Proposed § 1926.1216(c)(3) required that employers provide a safe method of entry and exit, and that this method comply with applicable OSHA requirements. This final provision retains the proposed requirement for a safe means of entry and exit, but did not retain the language requiring compliance with other ''applicable OSHA requirements'' because it is unnecessary: Such requirements apply regardless of whether this statement is included in the final rule. If another OSHA standard covers the means of entry and exit, the employer must comply with that applicable standard.

One commenter supported the proposed rule's requirement for safe entry and exit (ID–220, p. 8). Two others commenters agreed that assuring safe entry and exit is necessary, but asserted that it is often infeasible to use stairways that meet the requirements for stairways or ladders that comply with 29 CFR part 1926, subpart X's 4:1 ratio because of the configuration of these spaces (ID–075, p. 10; ID–124, p. 9). Subpart X contains many requirements for safe stairways and ladders, including the spacing between steps and rungs, the condition of the ladders, and the ratio of 4:1 for the vertical angle of portable non-self-supporting ladders relative to the structures supporting the ladders (see 29 CFR 1926.1050 *et seq.*). These comments seem to be requesting a blanket exemption from these OSHA requirements, but this request is overly broad. Even these commenters did not argue that all requirements of subpart X would be infeasible, or that the requirements in question are always infeasible. Employers may assert on a case-by-case basis under this standard, as they could under any other OSHA standard, that a requirement is infeasible in a particular situation. In such a situation, the employer has the burden of proving infeasibility. The employer also must make every effort to abate the hazard caused by having the ladder at a steeper angle than permitted, possibly by securing the top and bottom of the ladder while it is in use so it will not slip, and by training employees on climbing at a steeper angle.

Final § 1926.1203(e)(2)(viii) also requires that an employer use hoisting systems designed and manufactured specifically for personnel hoisting. This provision includes an exception to this requirement that allows for the use of job-made hoisting systems if a registered professional engineer approves these systems for personnel hoisting prior to use in entry operations regulated by § 1926.1203(e). Unlike the proposed rule, the final rule requires engineer's approval to be in writing to ensure that the specifications and limitations of use are conveyed accurately to the employees implementing the job-made

hoist, and that the approval can be verified. However, the final rule prohibits the use of commercial hoisting systems not designed and manufactured specifically for personnel hoisting because OSHA believes that employers cannot use such hoisting systems safely for this purpose. The requirements of final § 1926.1203(e)(2)(viii) for hoisting systems will eliminate further injuries and deaths of employees that could occur from the use of a hoisting system not designed specifically for personnel hoisting. This final rule provides employers with flexibility in choosing personnel hoisting systems by allowing a registered professional engineer to approve a job-made system. OSHA believes that either option ensures that the personnel hoisting system will meet the design specifications needed for employees to safely access a space. This final provision ensures that authorized entrants will always have a safe and effective means of entering and exiting the space, including escaping during an emergency.

There is no corresponding general industry provision that has requirements similar to final § 1926.1203(e)(2)(viii) for the alternative entries regulated under § 1910.146(c)(5). Section 1910.146(d)(4)(vii) requires safe access and egress, but that provision does not explicitly apply to the alternate procedures used under § 1910.146(c)(5). However, hazardous conditions may still arise in these spaces, particularly if the ventilation system stops functioning, thus making safe exit of entrants necessary. None of the comments OSHA received on proposed § 1926.1216(c)(3) provided a reason to exclude these requirements from the final standard. The same reasons provided in this preamble for requiring safe access and egress during permit-space operations governed by final § 1926.1204 also apply to the spaces regulated under final § 1926.1203(e) and, therefore, OSHA adopted the proposed requirement in this final rule.

Paragraph (e)(2)(ix). Final § 1926.1203(e)(2)(ix), which is identical to general industry § 1910.146(c)(5)(ii)(H), requires the employer to verify that the permit space is safe for entry and that the employer took the measures required by final § 1926.1203(e)(2). This provision also is similar to proposed § 1926.1216(d)(4), though it is less detailed than that proposed provision. The verification must be in the form of a certification that contains the date, the location of the space, and the signature of the certifying individual; the employer must make the certification available to entrants. The certification, in combination with the documentation required under final § 1926.1203(e)(1)(v), will document the employer's efforts to comply with final § 1926.1203(e)(2), enable OSHA and the employer to evaluate compliance with the standard, and, if permit-space incidents occur, assist OSHA and the employer in ascertaining the causes of those incidents.

One commenter supported the more detailed documentation requirements specified by the proposed rule, and the requirement in proposed § 1926.1216(a)(3) and (d)(1) to verify prior to entry that physical hazards remain isolated (ID–220, pp. 6–7). The commenter noted that these requirements serve as an ''important check that measures that may have been taken in weeks, days, or . . . a previous work shift are still in place and effective'' (id.). This final rule preserves the important check function because it also requires documentation of the isolation or elimination of physical hazards, in final § 1926.1203(e)(1)(v), and provides that entry under final § 1926.1203(e)(2) can occur only under the conditions set forth in final § 1926.1203(e)(1). This final rule, however, does so with the flexibility of the more performance-orientated language of the general industry standard.

Final § 1926.1203(e)(2)(ix) also requires that the employer date the certification and make it available to entrants. This requirement ensures that the certification provides information to the entrants about the latest conditions in the space the entrants will soon be entering. One commenter complained that requiring the name and signature of the individual who completed the isolation work, as the proposed rule did, could cause unspecified logistical problems (ID–114, p. 2). OSHA believes that requiring the signature only of the individual who provides the certification, as required by the general industry standard, will resolve any logistical problems.

Another commenter noted that using the term ''verification document'' in the proposed rule for spaces equivalent to the spaces regulated by final § 1926.1203(e), while using the term ''entry permits'' for other permit spaces in the proposed rule, was confusing (ID–099, p. 3). The documentation requirement in proposed § 1926.1216 was more detailed than the documentation requirement in this final rule and, thus, more similar to an entry permit. Final § 1926.1203(e)(2)(ix) uses the term ''certification,'' and this certification contains much less information than the entry permits required for other permit spaces and, therefore, is distinct (see final § 1926.1206). The general industry standard also uses this terminology, and, given the differences in documentation for the two types of spaces in the final rule, the Agency believes that the terminology is clear.

Paragraph (f). Final § 1926.1203(f), which is nearly identical to the general industry standard at § 1910.146(c)(6), addresses the reevaluation of confined spaces. This final provision requires each entry employer to reevaluate non-permit required confined spaces when there is a change in use or configuration that may increase the hazards to entrants, and to reclassify the space as a permit space if necessary. The Agency believes this requirement is necessary because conditions around and in confined spaces may change, especially when multiple employers are performing various construction activities around or in the space. Consequently, when indications of changes in the previous conditions arise that may increase the likelihood for a hazard to develop, the employer must reevaluate the confined space to ensure adequate employee protection. Final § 1926.1203(f) differs from the general industry rule in that it refers to ''each entry employer'' rather than ''the employer'' to emphasize that reevaluation is the responsibility of each employer that conducts entry operations in a confined space.

Several commenters were unsure what type of new information would trigger reevaluation under final § 1926.1203(f) (ID–098, p. 1; ID–124, p. 8). These commenters asked, for example, whether working with gasoline equipment near a confined space or driving a vehicle near a confined space would trigger reevaluation. Whether these conditions would trigger a reevaluation depends on whether it is foreseeable that the operation of the equipment or vehicle could increase the hazards in the space, such as by creating emissions that could enter the space or sparks that could ignite a fire in the space. Indications of a need for reevaluation may include, but are not limited to: (1) A change in the configuration or use of, or in the type of work conducted or materials used in, the confined space; (2) new information regarding a hazard in or near a confined space; and (3) when an employee or authorized employee representative provides a reasonable basis for believing that a hazard determination is inadequate (see also § 1926.1204(e)(5)). OSHA does not expect employers to reevaluate spaces when trivial changes occur that do not affect the

characteristics of the space or the work performed in the space.

One commenter suggested that OSHA include the time lapse since the initial evaluation as an indication of the need for a reevaluation (ID–013, p. 4). This commenter seems to be addressing situations in which several days or weeks could elapse between entries into a confined space, during which changes in environmental conditions and other conditions could occur that may increase hazards in the confined space. For example, a container of coating chemicals left slightly ajar in a space, or a substance that is leaching slowly through the soil into a new construction space, might release fumes at a slow rate so that they would not become concentrated or hazardous over the course of a single day if the space has some ventilation, but could create a hazardous atmosphere if left in a closed and non-ventilated confined space for a longer period of time. OSHA agrees that employers should consider elapsed time since the last evaluation in determining when to reevaluate a confined space because of the possibility that hazards may increase during this period. Unlike proposed § 1926.1207, which listed conditions that would require reassessment, this final provision uses the more performance-oriented language of the general industry rule. Therefore, this final provision does not list all the conditions that could trigger a reevaluation of the space because the circumstances that could increase the hazards in a space and prompt a reevaluation are too numerous to list.

One commenter was unsure how the entry employer would be able to detect whether changing conditions would require reevaluation (ID–086, p. 5). According to this commenter, the language of proposed § 1926.1204(b) did not require the employer to obtain information necessary to classify a space. The commenter's reading of the proposed rule is incorrect, and would also be incorrect of the final rule. Final § 1926.1203(a) requires each employer that has employees who may work in a confined space to ensure that a competent person identifies all confined spaces on the site, and to determine, through initial testing as necessary, which of these spaces are permit spaces, and to consider and evaluate other elements of the confined space. Therefore, under § 1926.1203(f) of this final rule, the entry employer must also ensure that a competent person compile the information necessary to determine whether a reevaluation is necessary, and conduct the reevaluation when necessary.

Paragraph (g). Final § 1926.1203(g), which is similar to the general industry standard at § 1910.146(c)(7), allows an employer to reclassify a permit space as a non-permit confined space only under the limited circumstances set forth in final § 1926.1203(g)(1)–(4). Final § 1926.1203(g) is substantively similar to proposed § 1926.1217(a). When there is no actual or potential hazardous atmosphere present in the space, and the employer eliminates all physical hazards in a space, this section allows an employer to reclassify the space as a non-permit confined space. The Agency believes that, in some instances, the procedures specified by final § 1926.1203(g) will be more efficient and less costly to implement than permit-space requirements. The Agency made three non-substantive changes from § 1910.146(c)(7) in the introductory paragraph of final § 1926.1203(g). First, OSHA added the word ''only'' to the provision. Second, OSHA changed ''under the following procedures'' to ''when all of the applicable requirements in paragraphs (g)(1) through (g)(4) have been met.'' OSHA made these non-substantive changes to clarify that an employer may use only these procedures to reclassify a permit space under this rule, and that the employer must comply with each of the provisions under final § 1926.1203(g) to reclassify a permit space. Third, to provide consistency with the requirement that an employer use a competent person to conduct the initial evaluation of the space, the final rule specifies that a competent person must also conduct the reevaluation and reclassification of the space.

One commenter requested that OSHA clarify whether employers must provide attendants or retrieval systems for spaces when final § 1926.1203(g) applies (ID–099, p. 4). Another commenter asserted that OSHA should require attendants for spaces regulated by final § 1926.1203(g) (ID–060, p. 3). Final § 1926.1203(g) does not require compliance with the attendant or rescue provisions of this final rule once the space has been reclassified as a non-permit space. Prior to the reclassification, however, the full permit program requirements apply. In general, such requirements are unnecessary for a space that has been reclassified as a non-permit space under § 1926.1203(g) because, to qualify as a non-permit space, there can be no actual or potential hazards in the space. However, an employer may elect to comply with the PRCS requirements, including the attendant and rescue provisions, even if the employer reclassifies the space as a non-permit space under final § 1926.1203(g).

Paragraph (g)(1). Final § 1926.1203(g)(1), which is identical to general industry § 1910.146(c)(7)(i), ensures that an employer may only reclassify a PRCS as a non-permit space if no actual or potential atmospheric hazards are present and the employer eliminates all other hazards in the space. This final provision also is similar to proposed § 1926.1217(a)(1) and (d)(1). OSHA expects that this provision will apply primarily to spaces where the employer eliminated or isolated the physical hazards. While this final provision would allow employers flexibility in the methods and procedures they use to identify and eliminate physical hazards, it would not relieve them from conducting a thorough assessment of the space and identifying hazards that include: Existing or potential liquids, solid materials, and electricity associated with processes; the use of equipment, ductwork, and conduits with exposed valves or that terminate in the confined space; exposed and energized electrical conduits; connected rooms and reservoirs that present engulfment hazards; and any other recognized hazards covered by OSHA construction standards or the general duty clause, 29 U.S.C. 654(a)(1). OSHA believes that eliminating or isolating all physical hazards in the space protects employees who perform construction work in the space. For additional information about isolating spaces within sewers and other continuous confined spaces, see the discussion of § 1926.1204(c)(3).

Paragraph (g)(2). Final § 1926.1203(g)(2), which is similar to the general industry standard at § 1910.146(c)(7)(ii), requires an entry employer considering reclassification to eliminate or isolate confined space hazards, when possible, without entering the space. This requirement parallels the requirement in final § 1926.1203(e)(1)(iv), and OSHA is including the requirement here for the same reasons, although it applies to different spaces. If it is not possible for an entry employer to eliminate or isolate confined space hazards without entering the space, then final § 1926.1203(g)(2) requires the entry employer to comply with all PRCS procedures in final §§ 1926.1204–1211 until elimination or isolation of the hazards is complete.

Final § 1926.1203(g)(2) differs slightly from the general industry requirement in that it contains a new first sentence clarifying that the entry employer must eliminate or isolate the hazards without entering the space unless it is infeasible to do so. This slight revision, which

OSHA based on proposed § 1926.1217(a)(3), improves employee protection by reducing unnecessary entry into permit spaces for classification purposes. OSHA received no comments on the parallel provision in the proposed rule.

In the final rule, OSHA also allows employers to isolate physical hazards, rather than eliminate them entirely. The effect must be the same—employees must be effectively protected from any potential exposure to any hazard—and it is therefore substantively similar to the general industry rule. OSHA included the isolation option, however, in response to comments indicating that full permit program requirements were not necessary when employers can use engineering controls to prevent employee exposure to physical hazards, even if the item causing the hazard is not totally removed from the space (see, *e.g.,* ID–210, Tr. pp. 56, 308–309, 327–328).

For the purpose of reclassifying a permit-required confined space that has potential energy sources in it, the methods the employer must use depend on the types of energies requiring elimination or isolation. OSHA's lockout/tagout requirements address electro-mechanical hazards, but lockout/tagout will not eliminate hazards associated with flowable materials such as steam, natural gas, and other substances that can cause hazardous atmospheres or engulfment hazards in a confined space. See OSHA Directive CPL 02–00–147: The Control of Hazardous Energy—Enforcement Policy and Inspection Procedures, at pp. 3–10 (Feb. 11, 2008). Employers can isolate these hazards by using the techniques described in the definition of the terms ''isolate'' or ''isolation'': blanking, blinding, misaligning or removing sections of lines or pipes, and a double-block and bleed system. See also August 25, 1995, letter to William K. Principe.

''Elimination'' means no on-going measures are necessary to keep the space free of a hazard; if continued operation of ventilation is required to address a hazard, for example, then the hazard is controlled, not eliminated. See, *e.g.,* September 19, 1994, letter to Edward Donoghue. If the employer uses ventilation to eliminate an atmospheric hazard from a space (as opposed to controlling the hazard), the employer must perform verification monitoring with the ventilation system off to establish the elimination of any atmospheric hazards before reclassifying the space. See November 11, 1993, letter to Trey Mayfield. Employers usually may not reclassify some confined spaces, such as tank containers, as non-permit spaces because residues may persist, resulting in potential atmospheric hazards. For example, the tank shell could oxidize, former contents could leach after absorption into the tank coating or lining, and contents trapped between the lining and the tank shell could leak. See September 20, 1994, letter to J.B. Saunders.

OSHA notes that the elimination of a hazard as required by final rule § 1926.1203(g)(2) will not necessarily result in the re-classification of the space as a non-permit space. The employer must still ensure that a competent person performs a full reevaluation of the permit space before reclassifying the space. For example, if an employer completes an initial evaluation of a space and determines that there is a single electrical hazard that can be locked out, but no atmospheric hazards, the employer must lock out the electrical hazard, entering the permit space under the full permit program requirements of § 1926.1204 if entry is necessary. Because the person who locks out the energy hazard may or may not be focused on the evaluation of the entire permit space, that employer's competent person must still verify that that the hazard is properly isolated, and that no other hazards are present, before the employer may re-classify the space as a non-permit space.

Final § 1926.1203(g)(2) also includes the note from the general industry standard stating that control of atmospheric hazards through forced-air ventilation does not constitute elimination of the hazards. Final § 1926.1203(e), not § 1926.1203(g), covers permit-space entry when the employer can demonstrate that the forced-air ventilation alone will *control* any atmospheric hazards within in the space. Final 1926.1203(g) requires the complete elimination of such hazards.

OSHA revised ''hazards'' to ''atmospheric hazards'' in the second sentence to reflect the change in final § 1926.1203(e)(1)(i), which will permit employers to use the alternative procedures if they isolate or eliminate all physical hazards. Employers may reclassify the space as a non-permit space under final § 1926.1203(g) even if a physical hazard remains, so long as the hazard is completely isolated such that employees cannot be exposed to it. OSHA does not view this as a substantive change from the general industry standard, which allowed employers to treat isolation of physical hazards as elimination of those hazards for purposes of reclassifying a permit space. See October 12, 1995, memorandum to Linda Anku.

OSHA refers to ''atmospheric hazards'' in the note to § 1926.1203(g), rather than using the term ''hazardous atmosphere'' as in § 1926.1203(e), to emphasize the distinction between control and elimination of airborne hazards. A ''hazardous atmosphere'' requires certain levels of contaminants in the air (*e.g.,* a flammable gas over 10 percent of its LFL or a concentration of a substance exceeding its PEL). The alternative procedures in final § 1926.1203(e) may be used when the employer eliminates any ''hazardous atmosphere'' even if the employer anticipates some presence in the air of a hazardous substance that must be controlled through practices to keep the substance at safe levels. Therefore a § 1926.1203(e) space remains a permit-required space that can be entered without a permit so long as the controls remain effective. Final § 1926.1203(g), in contrast, requires the total elimination of ''atmospheric hazards'' prior to entry, which means that the breathing atmosphere contains no potentially hazardous substance that would make it a potentially hazardous atmosphere; therefore, the employer has no need to maintain practices to control it (hence, it is not a permit-required space). For example, an employer can eliminate a ''hazardous atmosphere'' of methane by reducing the concentration of methane in the space from 12 percent of its LFL to 9 percent. However, the methane is still an ''atmospheric hazard'' at the lower 9 percent concentration because, without the alternative procedures that include ventilation, the level of methane could rise and injure or kill the workers inside the space. To eliminate the ''atmospheric hazard'' caused by methane, the employer must eliminate all of the methane from the space, and maintain this condition without forced-air ventilation or other practices.

Paragraph (g)(3). Final § 1926.1203(g)(3), which is nearly identical to the general industry rule at § 1910.146(c)(7)(iii), requires an entry employer seeking to reclassify a permit space to document the basis for determining that it eliminated all permit-space hazards through a certification that contains the date, the location of the space, and the signature of the certifying individual. In addition, the employer must make the certification available to each employee entering the space or his or her authorized representative. The employer must substantiate all determinations so that employers, employees, and the Agency have the means necessary to evaluate those determinations and

ensure compliance with the conditions that would enable the employer to conduct entry operations using the alternate procedures following reclassification.

This final provision is necessary to protect employees from physical or atmospheric hazards on initial entry into the space under final § 1926.1203(g), and to ensure that the space remains safe during entry operations. The requirement to make the certification available to employees or their authorized representatives ensures that entrants have the information necessary to detect developing hazards while they are working in the space.

Proposed § 1926.1219(d) provided that the employer must maintain an equivalent verification document until the work in the confined space is complete. One commenter asserted that OSHA should require employers to maintain records of these determinations for years to aid OSHA and the National Institute for Occupational Safety and Health (NIOSH), and to protect a company from potential litigation in the future; the commenter, however, did not specify exactly how OSHA and NIOSH would use these records (ID–060, p. 2). Another commenter stated that employers only need to maintain the certification until the completion of the project (*i.e.,* as long as there are entrants, the certification must be available to those entrants) (ID–108, p. 3). Nevertheless, the Agency recognizes that confined spaces not classified as PRCSs do not involve hazards as defined in this standard. Therefore, unlike permit-space entry permits, the Agency believes that it is not necessary for entry employers to maintain the certification required under final § 1926.1203(g)(3) for review and evaluation after completion of the work. The Agency agrees with the latter commenter that the purpose of certification is to allow employees and employers to detect any changes from the original entry conditions during confined space operations, and believes that the minimal useful information gained from these records likely would not justify the burden of maintaining them. Furthermore, no provision in this final rule prohibits an entry employer from maintaining this information for a period longer than the period required by the final rule.

Paragraph (g)(4). Final § 1926.1203(g)(4), which is similar to § 1910.146(c)(7)(iv), requires that whenever a hazard arises in a space reclassified under final § 1926.1203(g), employees must evacuate the space, and the entry employer must reevaluate the space. This final provision also is similar to proposed § 1926.1217(e)(2). The Agency believes that this final provision is necessary to protect entrants when conditions around and in confined spaces change, especially when performing construction activities around or in the space. Having a hazard arise in a reclassified space indicates that the previous evaluation was insufficient or that there has been a significant departure from the previous conditions; therefore, a thorough reevaluation of the entire space is critical.

This provision indicates clearly that entry employers retain responsibility for the safety of employees who enter spaces after they reclassify the spaces as non-permit confined spaces. The employer must determine if it is still appropriate, under the circumstances identified through the reevaluation, to classify the space where the hazard arose as a non-permit confined space. A reevaluation aimed at reestablishing compliance with final § 1926.1203(g) will involve the demonstrations, testing, inspection, and documentation required in paragraphs (g)(1) through (g)(3) of this final rule. OSHA anticipates that some employers will seek to reestablish compliance with final § 1926.1203(g), while others will choose to conduct the remainder of its entries in that space in accordance with the full permit-space program requirements specified by final §§ 1926.1204–1211. The Agency's concern is that the approach chosen must adequately protect employees who enter the spaces.

In some cases employers might need to require their employees to exit the space temporarily during a limited event where the hazard is already known and temporary, such as when an employer temporarily removes workers from an underground confined space while other work is conducted above the underground confined space. In this situation, the employer can allow employees to re-enter without re-classifying the space as a permit space after completing a reevaluation of the structural integrity of the space to make sure that the work above the underground confined space did not affect that space. In other cases, however, a new unanticipated hazard in the space means that the status of the space reverts to a permit-required confined space until the employer can identify and address the hazard and reclassify the space as a non-permit space under § 1926.1203(g). As a result, all of the provisions of this standard applying to a permit space apply, and entry must be conducted in accordance with the permit program requirements of § 1926.1204 and permitting requirements of § 1926.1205. The fact that the spaces addressed in § 1926.1203(g) were previously permit spaces before reclassification as non-permit spaces means that it is imperative for the entry employer to proceed with caution whenever a new hazard emerges.

Section 1926.1203(h) and (i)—Information Sharing and Coordination Duties at Multi-Employer Worksites

The discussion of paragraphs (h) and (i) has three parts:

(1) An overview of host employers and controlling contractor responsibilities;

(2) OSHA's authority to require host employers and controlling contractors to share information to protect the employees of others; and

(3) A paragraph-by-paragraph explanation of § 1203(h) and (i).

(1) Overview of Host Employers and Controlling Contractor Responsibilities

Timely information exchanges and coordination of work activities can be critical in safeguarding employees performing confined-space work, particularly on multi-employer worksites where one employer's actions can affect the health and safety of another employer's employees. As OSHA noted in its explanation of the proposed rule, there are a number of contractors and subcontractors performing jobs on most construction worksites, and there may be employees of different employers performing work within the same confined space. In many instances, employees of one subcontractor will enter a confined space after another subcontractor's employees complete their work within the space.

OSHA recognizes that both the controlling contractor and the host employer may have crucial information about confined spaces at a construction worksite. Therefore, in the proposed standard, OSHA adopted the information-sharing duties specified for the host employer in the general industry standard (§ 1910.146(c)(8)) and proposed applying them to both the host employer and the controlling contractor. As one labor organization noted, based on the experience of its members in both general industry and construction settings, worker safety is affected by timely information sharing in both general industry work and construction:

> [T]he problem posed by contracting out work in both situations is nonetheless the same—how to ensure that subcontractors that are in a work location for a limited period of time have the best possible information to

identify the location of confined spaces, assess their hazards, and ensure that their employees can perform their assigned duties safely.

(220.2, pg. 10.)

The same commenter also explained that information sharing may be even more critical in the construction setting because different workers may perform many different activities in the same space at different times, which can result in hidden dangers:

> Many chemical substances used in the construction industry, once in place, are neither detectable nor hazardous until exposed to a particular work process. For example, surface coatings such as paints and epoxies are seemingly stable—and are generally undetectable through air monitoring—once applied and dried. However, these same substances may create significant safety and health hazards to employees who perform welding and other processes involving heat while working in a confined space. A contractor that performs the routine assessment of physical and atmospheric hazards required by the standard would not necessarily identify these potential hazards.

(ID–213.1, pg. 1.) Similarly, polyurethane is often used for spray foam insulation. When welding or heating in a confined space is performed near spray foam insulation that contains polyurethanes, the heat could cause the polyurethanes to break down and produce hazardous fumes. A contractor may not recognize this hazard during a routine assessment of the space, and would rely on information from a host employer or controlling contract about the potential hazard.

Hidden dangers may also arise while working with equipment in confined spaces. For example, operating internal combustion engines, such as air compressors, pressure washers, and generators in a confined space could lead to carbon monoxide exposure. Because carbon monoxide is a colorless, odorless gas, it is difficult to detect without a monitor or testing equipment. A host employer, controlling contractor, or subsequent entry employer may not realize that carbon monoxide levels in a confined space have changed without communicating with the employer who operated the engine in the space. Similarly, when working with live circuits, an entry employer may reenergize a once de-energized circuit to perform work in a confined space. Communication about reenergized circuits will give the host employer, controlling contractor, and any subsequent entry employer's indication that conditions within the confined space may have changed.

In this final rule, as in the proposed rule, OSHA requires communication and coordination among controlling contractors and subcontractors, and between host employers and controlling contractors. The coordination and information-exchange duties in the final rule are largely the same as the duties required by the proposed rule, although the final rule makes communication with entry contractors the responsibility of the controlling contractor rather than the host employer, and does not contain the proposed rule's additional requirements for identifying the separate classifications of spaces. (See proposed § 1926.1204.)

Based on the record as a whole, OSHA finds that the information-sharing and coordination responsibilities of host employers and controlling contractors required by this final standard are critical means of identifying hidden or latent dangers in permit spaces and for preventing the actions of one employer from exposing another's employees to hazards in a permit space. These provisions will enhance the safety of workers in confined spaces by ensuring that all employers have the previously identified information at their disposal before entry to avoid hidden hazards and to make adequate preparations to protect employees entering permit spaces.

The rule places controlling contractors at the center of this process. Before any employer enters a permit space, the final rule requires controlling contractors to obtain relevant information about confined spaces on the worksite from the host employer, and then to relay that information, along with any other relevant information, to each contractor that will enter the confined space or that will be performing work that could foreseeably result in a hazard within that confined space. (See § 1926.1203(h)(1) and (h)(2).) The controlling contractor is also responsible for coordinating work in and around confined spaces so that no contractor working at the site will create a hazard inside the confined space. (See § 1926.1203(h)(4).) After the entry employer performs entry operations, the controlling contractor must debrief the entry employer to gather information that the controlling contractor then must share with the host employer and other contractors who enter the space later. (See § 1926.1203(h)(5).) Section 1926.1203(i) assigns the role of the controlling contractor to a particular employer in the event there is no controlling contractor for the project. Please see the discussion of § 1926.1203(i), below.

Some commenters expressed concern that the final rule imposes a duty on controlling contractors or host employers to verify the accuracy of the information they receive from other employers (ID–117, pg. 21; ID–078, pg. 1; ID–098, pg. 1). Consequently, one commenter predicted that this duty would cause controlling contractors and host employers to spend too much time and money overseeing their subcontractors' work (ID–120, pg. 2). Two different commenters, however, indicated that a controlling contractor should have even more responsibility, particularly when multiple employers will be working in the same area. The latter commenters argued that the controlling contractor should ''share in'' the ''responsibility'' and costs of permit space entries, including verifying the training of subcontractor employees and communications among employers, particularly when multiple employers enter and work in the permit spaces at the same time (ID–108, pg. 4; ID–210, pg. 60). One of these latter commenters expressed concern that, without controlling contractor verification, ''untrained or unqualified persons would be likely to enter the spaces where a self-declaring system of monitoring is employed'' (ID–108, pg. 4).

The final rule does not require the controlling contractor or host employer to verify entry-employer information (testing, monitoring, etc.) or to have its own employees enter any confined space or take other direct actions to discover new information; requiring controlling contractor employees to enter permit spaces might *increase* exposure of unqualified persons to the hazards of permit spaces. Unless the controlling or host employer allows its own employees into a permit space, the final rule only requires the controlling contractor or host employer to share information that is already in its possession or that it receives from other employers. OSHA agrees that it is important to prevent untrained or unqualified persons from entering the space. The type of information that the controlling contractor must share with subcontractors, and that the host employer must share with the controlling contractor, is identical to the type of information that the host employer must share with contractors under the general industry standard. (See § 1910.146(c)(8).) Separately, controlling contractors still have the same duty they have always had to exercise reasonable care to ensure compliance with the requirements of other applicable standards (*e.g.,* welding standard, respirator standard) in accordance with OSHA's multi-

employer citation policy. The specific communication and coordination requirements imposed by this rule are discussed in the paragraph-by-paragraph explanation of § 1926.1203(h) that follows the discussion of OSHA's authority for these requirements.

(2) OSHA's Authority To Require Host Employers and Controlling Contractors To Share Information To Protect the Employees of Others

Two commenters argued that OSHA lacks the authority to impose any requirements on host employers or controlling contractors except with respect to their own employees. (112.1, p. 14–15; and 117.1, pg. 7–12.) One of these commenters stated that a ''controlling contractor . . . may not be cited if it did not create a cited hazard and it has no employees exposed to the hazard,'' explaining that the ''legal analysis supporting this point is set forth well'' in the Occupational Safety and Health Review Commission (OSHRC) decision in *Secretary of Labor* v. *Summit Contractors, Inc.,* 21 BNA OSHC 2020 (No. 03–1622, 2007). (112.1, p. 15.) OSHA notes that both the reviewing federal court and the Commission itself subsequently rejected that view in *Solis* v. *Summit Contractors, Inc.,* 558 F.3d 815 (8th Cir. 2009) and *Secretary of Labor* v. *Summit Contractors, Inc.,* 23 BNA OSHC 1196, 1202–03 (No. 05–0839, 2010).

OSHA has clear authority to require host employers and controlling contractors to comply with the information-sharing and coordination provisions in the final rule. The preamble to the proposed rule discussed in detail OSHA's authority to impose the duties in this standard (see 72 FR 67358–67360, Nov. 28, 2007), and the Agency reasserts the same basis with respect to this final rule, along with the 2009 and 2010 *Summit* decisions. First, the plain language of the OSH Act and its underlying purpose support OSHA's authority to place requirements on employers that are necessary to protect the employees of others. As explained later in this section of the preamble, the overall sharing of information that will occur in accordance with the final host-contractor provisions will help protect the employees of both host employers and contract employers. Second, congressional action subsequent to passage of the OSH Act recognizes this authority. Third, OSHA consistently interprets its statutory authority as permitting it to impose obligations on employers that extend beyond their own employees, as evidenced by the numerous standards (including several construction standards) that OSHA promulgated previously with multiemployer provisions. OSHA provided several examples of these standards in the preamble to the proposed rule, and OSHA subsequently promulgated additional rules requiring controlling entities and utilities to take steps to protect other employers' employees during crane operations. (See 29 CFR 1926.1402(c), 1926.1402(e), 1926.1407(e), 1926.1408(c), and 1926.1424(b).) Finally, numerous courts of appeal and the OSHRC have upheld OSHA's authority to place obligations on employers that reach beyond their own employees. In addition to the authorities listed in the preamble to the proposed rule, the Third Circuit upheld the information-sharing requirements in the Asbestos Standard for the construction industry, noting: ''We are not convinced that the Secretary is powerless to regulate in this [way], especially given the findings she has made regarding the importance of building owners in the discovery and communication of asbestos hazards.'' *Secretary of Labor* v. *Trinity Indus., Inc.* (*Trinity*), 504 F.3d 397, 402 (3d Cir. 2007).

(3) Paragraph-by-Paragraph Explanation of § 1926.1203(h) and (i)

Final § 1926.1203(h) is substantively similar to the corresponding provision for general industry confined spaces at § 1910.146(c)(8), but modified to include requirements for controlling contractors that were included in the proposed rule. The type of information that the controlling contractor must share with entry contractors, and that the host employer must share with the controlling contractor, is identical to the type of information that the host employer must share with contractors under the general industry standard. The primary difference in this area between this rule and the general industry standard is that this rule makes the controlling contractor the central point of the information exchange, while the host employer is the central point in the general industry standard. The final rule also structures the requirements in chronological order to make them easier to follow, setting out the information sharing and coordination duties prior to entry, and then setting out the duties during and after the entry. These requirements are an efficient and necessary way to ensure that all employers have important information about the confined-space hazards so each employer can provide adequate protection to employees it directs.

OSHA is designating the controlling contractor, rather than the host employer, as the information hub for confined-spaces information-sharing and coordination because the controlling contractor's function at a construction site makes it better situated than the host employer (assuming the host employer is not also the controlling contractor) to contribute to, and to facilitate, a timely and accurate information exchange among all employers that have employees involved in confined-space work. General industry worksites, such as a refinery or factory, are likely to be stable, and owned and under the control of the host employer for a substantial length of time. The host employer is well suited in that scenario to facilitate information sharing because the host employer is most likely to have control of the site and information about it before another employer performs confined space work there. On a construction worksite, the controlling contractor has overall authority for the site and is best situated to receive and disseminate information about the previous and current work performed there. Evidence introduced at the hearing indicated that the controlling contractor communicates with entry employers more frequently than the host employer does (ID–210, pg. 315–320). In contrast, the record shows that host employers are not always directly involved in the construction process and, therefore, are often less well situated than controlling contractors to facilitate information-sharing (ID–220, pg. 14–15).

The final rule is substantively similar to the proposed rule, except that the proposal would have required the host employers to communicate directly with entry employers. For the reasons discussed in the prior paragraph, OSHA assigned the controlling contractor that function in this final rule, giving only limited information-exchange requirements to the host employer. In the final rule, OSHA also clarified the scope of the information exchanges by requiring the controlling contractor to coordinate and share information with entities whose activities could foreseeably result in a hazard in the confined space, as opposed to all contractors ''near'' the permit space. Most other differences between these requirements in the proposed rule and the final rule are stylistic in nature and intended to bring it closer to the text of general industry rule.

In the following, more detailed discussion, paragraph (h)(1) contains the pre-entry duties of host employers, (h)(2) the pre-entry duties of controlling employers, and (h)(3) the pre-entry duties of entry employers. Paragraph

(h)(4) then describes the coordinating responsibilities of controlling and entry employers, and (h)(5) explains their duties during and after entry. Finally, paragraph (i) explains requirements when there is no controlling employer.

Paragraph (h)(1)—Pre-entry duties of host employer. The host employer serves an important role in providing information because the host employer is likely to be the employer most familiar with the property and the most likely to retain, between separate construction projects, information about permit spaces on the property, particularly in construction involving existing facilities. (ID–141, pg. 3.) As a result, the host employer may have information about hidden dangers or other information that can help reduce employee exposure to hazards in permit spaces.

Final § 1926.1203(h)(1) requires the host employer to share information it has about the location of known permit spaces, and any previous steps that it took, or that other employers took, to protect workers from the hazards in those spaces. Telling other employers about each known permit space on the worksite is essential to achieving the purpose of the information-exchange requirements, which is to ensure that contractors with employees entering confined-spaces are aware of the type and degree of these hazards and can take necessary safety precautions. Having information about the previously identified hazards in a space, and the previous efforts to address them, will assist the entry employer in ascertaining if those hazards still exist, and help the entry employer avoid problems addressing the hazards that previous entry employers encountered. Final paragraph (h)(1) is similar to the corresponding provision for general industry confined spaces and to proposed § 1926.1204(a), although the host employer must share the information with the controlling contractor instead of the entrants. The controlling contractor then shares it with the entry employers. OSHA did not receive any comments specifically opposing the inclusion of this information in the information-exchange requirements.

The proposed rule provided that host employers had to share the information about known hazards only ''if they have it,'' and to identify confined spaces when the host employer or controlling contractor ''actually knows'' that they are confined spaces. (See 72 FR 67407.) The purpose of including these phrases in the proposed rule was to clarify that the controlling contractor and host employer need not engage in extensive and burdensome investigations of the history of the worksite, and, most importantly, that these employers ''are not required to enter a confined space to collect the relevant information.'' (See 72 FR 47933.) OSHA is retaining the same approach in the final rule, but refers to ''known'' permit spaces instead of the more awkward ''space that the host actually knows is a confined space.'' The final rule also narrows the requirement by focusing specifically on known *permit* spaces, rather than to all confined spaces, because these spaces pose the greatest hazards to employees. Narrowing the requirement also reduces the number of information exchanges and matches the type of information that the host employer must share, which is linked to the nature of the space as a permit space, *i.e.,* information about the hazards that make the space a permit space, and the previous efforts to address those hazards. This narrowed approach will appropriately focus the exchanges on those spaces with known hazards. In the event that an employer is both a host employer and the controlling contractor, the employer has the information that complies with the provisions of final § 1926.1203(h)(1), (h)(2), (h)(4), and (h)(5).

For example, a host employer hires a controlling contractor to build an underground storage facility and discovers during that process that there is an underground stream below the property. Years later the host employer hires a different controlling contractor to expand the underground storage facility in a manner that will include several confined spaces. In this example, the host employer must share the plans for the existing storage facility and identify the location of the underground stream so that the controlling contractor and the relevant subcontractors can develop a permit-space program appropriate to address potential engulfment hazards. The host employer also would be responsible for disclosing the storage of any potentially hazardous chemicals or other substances in the existing storage facility. However, the final rule would not require the host employer to drill for additional undiscovered underground rivers, conduct soil tests, or test the air in the existing storage facilities.

Paragraph (h)(2)—Pre-entry information-sharing duties of controlling contractors. In paragraph (h)(2), OSHA requires controlling contractors to obtain the information specified in paragraph (h)(1) from the host employer (*i.e.,* the location of permit spaces, the known hazards in those spaces, measures employed previously to protect employees in that space). Then, before permit space entry, it must relay that information to any entity entering the permit space and to any entity whose activities could foreseeably result in a hazard in the confined space. (See § 1926.1203(h)(2)(ii).) The controlling contractor must also share any other information that it has gathered about the permit space, such as information received from prior entrants.

The final rule varies slightly from the proposal in requiring controlling contractors to share the information with any ''entity,'' rather than other contractors or employers, to ensure that the controlling contractors also share this information with independent contractors who are not ''employers'' under the OSH Act. These contractors pose the same issues as do employers when working in or around permit spaces, *i.e.,* they may increase hazards for others working in or around the space if they do not comply with the provisions of this standard. OSHA concludes that it is equally important for controlling contractors to pass along information about permit space hazards to independent contractors, and to coordinate their activities as required in this standard. Although OSHA is not directly requiring independent contractors to share information in accordance with the standard, OSHA expects that controlling contractors will be able to obtain the necessary information as a result of their control over the worksite.

OSHA requires the controlling contractor to obtain the information from the host employer before entry operations begin so that the controlling contractor can share the information with the entities specified in § 1926.1203(h)(2)(ii) in time to minimize potential employee exposure to hazards in the confined spaces. This provision was not in the proposal; the proposal required both the host employer and controlling contractor to share information directly with the entry employer. (See proposed § 1926.1204(a).) OSHA added this provision to the final rule to conform to the final rule requirement that the host employer share information with the controlling contractor rather than the entry employer. The final standard makes it explicit that the controlling contractor and host employer have separate duties with respect to the same information: the controlling contractor must obtain it under final § 1926.1203(h)(2)(i) and the host employer must share it under final § 1926.1203(h)(1).

These complementary duties also address the concerns of some

commenters that host employers are often state or local government entities not subject to the OSH Act. (ID–78, p. 2; ID–141, pg. 3.) The commenters expressed concern that it might be difficult for the controlling contractor to obtain the information from a government entity not subject to § 1926.1203(h)(1), and that the host's failure to provide the information could subject the controlling contractor to heightened liability. In such cases, OSHA expects the controlling contractor to exercise due diligence in attempting to obtain the information from the host employer, and believes that most hosts will provide it when the controlling contractor explains that it needs the information in order to perform the job safely and in accord with law.

Final § 1926.1203(h)(2) is similar to the corresponding provisions for general industry confined spaces with a few distinctions. General industry § 1910.146(c)(8)(i) requires the host employer to share the specified information with ''the contractor.'' This final rule requires an exchange of the same information, but § 1926.1203(h)(2) requires the controlling contractor to exchange that information with both the entity entering the permit space and with other contractors working around the permit space.

The general industry rule requires the host employer to inform other employers that they can conduct permit-space entry only by complying with a permit-space program meeting the requirements of the standard (see § 1910.146(c)(8)(i)). There was no specific parallel in the proposed construction rule. This final rule also does not contain a specific parallel requirement because the entry employer's duty to use a valid permit program is explicit in § 1926.1203(d).

OSHA has clarified the requirements for communication with entities whose activities outside a confined space may affect workers inside the space. Many commenters found the terminology of the general industry rule (referring to work ''in or near permit spaces'' in § 1910.146(c)(8)(iii)) and the proposed rule (referring to ''employers'' in proposed § 1926.1209(b)(3).) confusing in the context of a construction worksite.[16] Therefore in this final rule, OSHA refines this requirement by requiring the controlling contractor to provide the information to other entities on the worksite when the activities of these other entities could foreseeably result in a hazard within the confined space. This information-exchange requirement also is similar to the information-exchange requirement in § 1926.65(b)(1)(iv) (Hazardous waste operations and emergency response). Both rules require employers to inform contractors and subcontractors about hazards of the work the contractor will be performing, including hazards of the worksite.

OSHA designed this requirement to protect authorized entrants and others who are part of the permit-space entry process (*e.g.,* the attendant) from a wide variety of potential activities, including those that may be beyond the scope of the permitting process. Therefore, the information-exchange requirement applies to activities outside the permit space that could foreseeably result in a hazard within the permit space, either alone or in conjunction with the activities inside the space. Examples include use of a heavy gas that could enter the space and cause oxygen deficiency or sparks from a welding operation outside the space that could ignite flammable gas inside a confined space. To prevent the creation of confined-space hazards, final § 1926.1203(h)(4) supplements this requirement by requiring the controlling contractor to coordinate the activities of entities either entering the permit space or engaged in actions that could foreseeably result in a hazard within the space.

Paragraph (h)(2)(i). As noted above, final § 1926.1203(h)(2)(i) requires the controlling contractor to obtain from the host employer, before permit-space entry, the host's information regarding permit-space hazards and previous entry operations. OSHA included this provision in the final rule as part of the change to limit the host employer's involvement in the information-exchange process, and to centralize the role of the controlling contractor. The controlling contractor needs this information for dissemination to entities entering permit spaces (final § 1926.1203(h)(2)(ii)), and to fulfill its duty to coordinate permit-entry activities with other work occurring in and around the permit space (see final § 1926.1203(h)(4)).

Paragraph (h)(2)(ii). The final rule requires the controlling contractor to pass along the information it received from the host employer about the permit spaces on the worksite. The controlling contractor is at the hub of the information exchanges in the final rule, so this step is critical to ensuring that the host employer's information reaches the entities entering the permit space and others whose work may create hazards inside the permit space. The parallel provision of the proposed rule, § 1926.1204(a)(1), was potentially duplicative and ambiguous because it required the controlling contractor *and* host employer to provide the same information to the same entities.

Final § 1926.1203(h)(2)(ii)(A) and (B) require the controlling contractor to share with the entities entering the permit space, and any other entity at the worksite whose activities could foreseeably result in a hazard in the permit space, the information that the controlling contractor received from the host employer, as well as any additional information the controlling contractor has about the topics listed in paragraphs (h)(1)(i) through (iii) (*i.e.,* the location of permit spaces, the hazards in those spaces, and any previous efforts to address those hazards). These paragraphs are substantively similar to the general industry requirements at § 1910.146(c)(8)(ii) and (iii). Having information about the previously identified hazards in a space will help the entry employer ascertain whether those hazards still exist.

For employers or other entities whose activities could foreseeably result in a hazard in the confined space, this information will improve their ability to assess whether those activities will create such a hazard, to avoid creating the hazard or to minimize any hazard they create, to prevent their employees' unauthorized entry into a permit space, and to help them prepare for coordination of their activities under final § 1926.1203(h)(4).

Final § 1926.1203(h)(2)(ii)(C) is similar to the general industry standard at § 1910.146(c)(8)(iii) in that it requires the controlling contractor to share with each specified entity any precautions or procedures that the host employer, controlling contractor, or any entry employer implemented earlier for the protection of employees working in permit spaces. This provision also is similar to the proposed standard at § 1926.1204(a)(2)(iii). This final provision requires the controlling contractor to notify the specified entity of the procedures currently used, or previously used, at the permit space, thereby alerting each new entering entity to information that it can use to improve its entry plans and permit program. This provision does not require the controlling contractor to develop entry programs for its contractors.

One commenter urged OSHA to alter the information-exchange requirements in proposed § 1926.1204(a) by requiring the controlling contractor to share all information about precautions or procedures implemented by any employer within a given permit space,

[16] For a discussion of the term ''near'' see the overview of § 1926.1205 in this preamble.

not merely the precautions and procedures the host employer or controlling contractor implemented for that space (ID–220, pg. 16). OSHA agrees, and the final rule requires controlling contractors to share this information because it is likely to be helpful to subsequent entry employers as they assess the spaces and develop their own procedures. This information may also reduce the amount of time it takes subsequent entry employers to develop their own entry procedures. The controlling contractor's experience with a permit space includes information gathered from other entry employers and other sources; the controlling contractor will share this information with subsequent entry employers. If the information about previous procedures came from an entry employer who worked on projects before the controlling contractor became involved, then the controlling contractor would obtain that information from the host employer. If the previous procedures came from an entry employer who worked under the controlling contractor, then the controlling contractor would have obtained the information pursuant to other provisions of this rule.

Examples of Pre-Entry Information-Exchange Duties of Host Employers and Controlling Contractors

Example 1. A controlling contractor is walking the worksite and notices a significant amount of water pooling so that it might enter an underground permit space. The controlling contractor must alert the subcontractor working in that space of the potential for water entering the space or weakening the structure, and must also inform other entities in the area whose activities could foreseeably result in a hazard inside the confined space (*e.g.,* entities whose activities may be contributing to the pooling water, may convey an electric charge through the water into the confined space, or may weaken the structure around the confined space to allow the water to enter the space).

Example 2. The controlling contractor hires a subcontractor to apply a flammable epoxy coating to the walls of a confined space; the subcontractor does so under a permit program, and then cancels the permit in compliance with this final rule. The controlling contractor must inform subsequent employers entering the space about the application of that epoxy and the procedures used to address hazards in the space.

Example 3. If a host employer stored hazardous chemicals in a confined space during a period when leaching of the chemicals could occur, the host employer must disclose that previous use of the space.

Example 4. The controlling contractor hires a welder to weld a new structure inside a fully-enclosed above-ground permit-required confined space. The welder sets up a ventilation system that complies with all applicable OSHA requirements. The controlling contractor also hires a different subcontractor to perform unrelated excavation work 75 yards away from the permit space. The controlling contractor must alert the excavation contractor to the fact that a welder is working in the confined space, that the space has been designated a permit space and must not be entered by any of the excavation contractor's employees, and that the welder is relying on a ventilation system that must not be impacted by the excavation contractor's activities, such as by blocking the ventilation system or by operating heavy machinery, generators, etc. in such a way that their fumes could enter the confined space. In this example it is foreseeable that the excavator might otherwise place dirt from the excavation (the ''spoil pile'') in a location that could interfere with the welder's ventilation system, or add fumes into the confined space. Either action would foreseeably result in a hazard in the permit space. However, absent some other abnormal condition such as an underground gas pipeline running between the excavation site and the permit space, the controlling contractor would not need to ensure any coordination between the excavating activities and the welding activities because the excavation itself (aside from the placement of the spoil pile) is 75 yards away and would not foreseeably result in a hazard in the permit space.

In example 1, the entry employer might not be aware of the hazard from the pooling water or of other hazards that could arise from the activities of others outside the site in conjunction with the pooling water. In examples 2 and 3, both types of information could be critical to employers performing subsequent welding or other tasks that might ignite remaining fumes or release vapors inadvertently.

These information exchanges, in combination with separate OSHA requirements that entry employers share specific information about the permit spaces with controlling contractors, will ensure that each ''downstream'' employer (the employer performing the permit-space entry) receives important information about the relevant permit space in time to address hazards that could endanger employees it directs.

One commenter questioned whether the information duties would apply to all information—both written and oral—the host employer or controlling contractor may receive, rather than merely information that is readily available (ID–153, pg. 18). The obligations in this final rule apply to all information, including both written and oral information the host employer or controlling contractor receives about hazards or potential hazards in a permit space. It is the responsibility of the host employer and controlling contractor to retain this information, which protects employees who are performing permit-space work, and to communicate this information to entry employers and the others identified in the standard.

A different commenter asserted that employers will have difficulty managing and recording the information they are required to communicate (ID–078, pg. 2). However, the record indicates that many construction employers already are following the general industry confined spaces standard, which requires host employers to share similar information (see § 1910.146(c)(8)(ii) and (c)(8)(iii)). This final rule also does not prescribe how employers are to gather, record, or maintain this information. This commenter urged OSHA to provide a database of relevant information that all employers could access; however, such an action is beyond the scope of this rulemaking.

The National Association of Home Builders asserted that the information-exchange requirements would not be beneficial in the context of residential construction because conditions change too rapidly (making it likely that the information will be inaccurate when exchanged), and that the ''small likelihood that the provision would ever be of any use to employee safety'' should not outweigh the ''burden of compliance'' in residential construction (ID–117, pg. 20). This comment misses the point: this is an important safety issue because the information exchange protects workers from exposure to harmful conditions. The rapidly changing confined-space conditions on residential construction sites is a major reason OSHA is requiring these information exchanges. Moreover, only the presence of a permit-required confined space triggers the information-sharing requirements, and every entry into a permit-required confined space, by definition, exposes the entrants to a hazardous atmosphere or other serious hazard absent the measures implemented through the permit program. The commenter offers no support for the assertion that sharing information to help entry employers identify these hazards as quickly as possible, and before employee exposure occurs, would not be of ''any use to employee safety.'' In light of the record as a whole, OSHA believes that there will be an important safety benefit, and, therefore, does not find the commenter's argument persuasive.

The same commenter offers another reason for objecting to the information-sharing requirement: On large commercial construction projects, it is common to exchange information at the start of the project, but this information

may be incomplete or partial (ID–117, pg. 20). In some cases, as construction progresses, the controlling contractor obtains more information as it becomes available. Consequently, this commenter asserted that the controlling contractor or host employer will exchange information with the entry contractor in a piecemeal fashion unless OSHA requires the entry employer to request all of the information available (See also ID–219.2, pg. 37 (marked as pg. 34)). The commenter's suggested approach to avoiding piecemeal information exchanges is to have the controlling contractor or host employer withhold relevant information if the contractor does not request it. This approach is contrary to the purpose of this paragraph: To ensure that employers have as much information as possible, and in a timely manner, when preparing to work safely in a confined space. Subcontractors are not likely to be aware of hidden dangers, and are, therefore, unlikely to request information about them. To protect their employees working inside a confined space, subcontractors would likely submit a *pro forma* request for information to the controlling contractor and host when they initially begin work at any site, but it is not clear that such a process would be substantively different from the approach specified in this final rule, except that it would be involve an extra step.

In any event, OSHA has specified when the controlling contractor must share the information: ''before entry operations begin.'' The controlling contractor must share the information obtained from the host employer, and any other information that the controlling contractor gathered from other sources (*e.g.,* previous entries into the same space as part of the same construction project), with the entry employer before entry. If such permit-space work is to occur near the midpoint of a project, a single conversation shortly before the evaluation and entry may fulfill the requirements of the final rule. There is no reason the controlling contractor cannot send all of the information at once rather than sending updated information in a piecemeal fashion as the commenter noted, as long as the information is shared with the entry employer prior to entry. The key parts of the provision are that the controlling contractor remains informed, and ensures that the information is conveyed to the entrants. Therefore, employers involved in permit-space entry on construction worksites have flexibility to decide the manner in which to exchange this information (*e.g.,* whether orally or in writing, whether the entry employer or controlling contractor initiates the exchange); however, they all have a duty to ensure that they share the information.

Paragraph (h)(3)—Pre-entry information-sharing duties of entry employers.

This provision, which sets forth the information-exchange requirements for entry employers, is similar to the proposed provision and to the corresponding provision for general industry confined spaces standard at § 1910.146(c)(9), although it uses slightly different terminology. Here, OSHA uses the term ''entry employer'' to clarify that the paragraph applies to employers who perform permit-space entry operations. And as in the rest of this section, the controlling contractor, rather than the host employer, is the focal point of the information exchange. OSHA believes that these requirements will contribute significantly to the increased safety and health of the employees of entry employers involved in permit-space entry operations.

Paragraph (h)(3)(i). This provision requires an entry employer to obtain information about the permit-space entry operations from the controlling contractor, and works with final § 1926.1203(h)(2), which requires the controlling contractor to share information about permit-space entry operations with the entry employer. OSHA believes that the reciprocal obligations in this final rule, which are consistent with the general industry standard, will increase the effectiveness of the information exchange by placing the duty to share this information on both parties. Both employers will now have the duty to exchange information, although they will likely accomplish their duties in a single interaction. The information exchange will ensure that the entry employer understands the type of space it will be evaluating, and will allow it to anticipate the permit-space hazards that may be present during entry.

Paragraph (h)(3)(ii). The final rule requires an entry employer to inform the controlling contractor of the permit-space program that the entry employer will follow, including information about any hazards likely to be confronted or created in each permit space. This exchange must take place prior to entry to ensure that the controlling contractor is informed of all the hazards in a timely manner and can take action, if needed, to prevent an accident or injury before entry operations begin. OSHA expects this exchange to occur after the employer has completed its assessment of the permit space, which is generally necessary to identify the hazards in the space and ensure that a proper permit-space program is selected. Consistent with the approach in the proposed rule, separating this pre-entry exchange from the subsequent entry report required by § 1926.1203(h)(5)(ii) clarifies that these two information exchanges must take place at two distinct stages of permit-entry operations.

One commenter objected to the proposed requirement that the entry employer inform both the controlling contractor and host employer of the procedures the entry employer planned to use in the permit space. The commenter asserted that the proposed provision was ''an unnecessary burden [that] in some cases may be infeasible'' (ID–124, pg. 6). This final rule eliminates the requirement that the entry employer share this information with the host employer, eliminating any difficulties an entry employer may have communicating with a host employer, and is consistent with the rule's overall designation of the controlling contractor as the focal point of the information-exchange process. As explained elsewhere, the controlling contractor needs this information to coordinate entry as necessary, and the exchange provides the controlling contractor with another opportunity to inform the entry employer about the hazards of the permit space as required by § 1926.1203(h)(2).

Paragraph (h)(4)—Coordination duties of controlling contractors and entry employers. Final § 1926.1203(h)(4) requires controlling contractors and entry employers to coordinate permit-space entry operations in two circumstances: (1) When more than one entity performs entry operations at the same time, or (2) when permit-space entry is performed at the same time any activities that could foreseeably result in a hazard in the permit space are performed. The controlling contractor and each entry employer have separate duties under this provision, and each can be cited for failing to perform its part of the coordination. Similar obligations were included in the proposal, but were not stated as clearly as they are here, and also are present in the general industry standard. Minor differences between this final rule and the general industry and proposed rules are matters of terminology or reflect the key role of the controlling contractor in this construction rule.

There is a need to coordinate entry operations whenever multiple entities are performing work simultaneously in or around a permit-space because of the

possibility that one entity's activity might create a hazard for workers employed by a different entity (*e.g.,* welding next to the application of a flammable coating). The purpose of this provision is to protect employees from foreseeable hazards that could result from a lack of coordination between entry entities in the permit space, or with entities outside the space whose activities could create hazards inside the permit space. This paragraph works in concert with the requirement that entry employers inform the controlling contractor of the permit-space program that the employer will use and the hazards they are likely to encounter in the space, including hazards created after entry. The controlling contractor can use this information to coordinate the entry operations to ensure safety for all workers in the space.

It is important for the controlling contractor to participate in each coordination effort because construction worksites are constantly evolving, with multiple employers performing work. Consequently, the controlling contractor, as the employer with overall responsibility on the worksite, is in the best position to coordinate the entry operations. This provision also requires the entry employer to coordinate entry with the controlling contractor because it is the entry employer who evaluates a confined space, who will have employees it directs entering the space, and who may have the most current information about the space.

For example, a properly informed controlling contractor will be aware of excavation work on a site directly above an underground permit space, and will coordinate work to ensure that no employees are in the permit space when the excavation work could foreseeably cause part of the underground space to collapse. Similarly, the controlling contractor must ensure that, when an employer is using a crane in the vicinity of a permit space, lifts are planned and implemented so that the crane would not be carrying its load over an occupied permit space or its entry/exit. In those scenarios, the entry employer would be responsible for informing the controlling contractor when it plans to have employees inside the permit space. Coordination would typically involve the controlling contractor scheduling the activities appropriately, working with all of the employers involved to ensure that they adhere to the schedule, implementing a plan to remove the employees from the permit space at the appropriate times, and designating locations to keep the employees clear of the load during the lifting operation.

This coordination requirement responds to a concern that proposed § 1926.1204(d) did not account for the fact that work taking place near a permit space can create hazards that could harm other employers' employees inside the space (ID–210, pg. 317–18). The commenter raising this concern provided an example of an employer that uses gas that is heavier than air near a confined space; such a gas could create an atmospheric hazard in the space by displacing oxygen.

OSHA agrees with this comment and the final standard requires the type of coordination that will address this concern. It specifically requires the controlling contractor to coordinate entry operations of any entities whose activities could foreseeably result in a hazard in the confined space. This requirement is consistent with the requirements of final §§ 1926.1204(k) and 1926.1210(f). Final § 1926.1204(k) requires an entry employer to account for such coordination as part of its permit program, while final § 1926.1210(f) requires the entry supervisor to determine, on transferring responsibility for permit operations, that entry operations remain consistent with the terms of the entry permit and that entry conditions are acceptable.

Other commenters objected that controlling contractors are not in the best position to coordinate because they often are not on the site to provide coordination, do not have the knowledge or experience to correctly identify the hazards of a permit space, and may not know of the planned entry (ID–117, pg. 21; ID–075, pg. 6). These commenters also argued that if the final standard requires coordination, such coordination should be between the involved host employer and entry employer(s), as is the case under the general industry standard (ID–117, pg. 22; ID–075, pg. 6).

OSHA disagrees with these comments. An employer that meets the standard's definition of controlling contractor has ''overall responsibility for construction at the worksite.'' As noted earlier, other commenters agreed that controlling contractors were better suited than host employers to serve at the center of this process in construction activities. (ID–210, pg. 315–20; ID–220.2, pg. 14–15). By virtue of their responsibility for the entire worksite, controlling contractors schedule and coordinate activities among different subcontractors to ensure that they perform construction tasks in the correct sequence, in the proper manner, and with minimal delay between the steps on a project. The vague hypothetical scenarios presented by the commenters do not persuade the Agency that the coordination required by this final rule is a significant departure from the type of coordination required on a regular basis under existing work practices. Accordingly, OSHA concludes that controlling contractors, as the entities actually managing construction activities at a worksite, are better able than host employers to coordinate the activities of the other employers whose employees work in or around a permit space. Coordination of entry operations under final § 1926.1203(h)(4) is a critical component of this standard.

Nevertheless, OSHA has structured the coordination provision in the final rule to minimize additional responsibilities and provide appropriate flexibility for controlling contractors. If the controlling contractor's employees will not enter the permit space, the controlling contractor may fulfill its coordination duty by relying on information provided by entry employers. The controlling contractor does not necessarily have to be on the site at all times or have expertise on permit space hazards to coordinate entry operations, just as the controlling contractor does not need to be on site at all times to coordinate material deliveries or subcontractor assignments. In addition, the final rule does not specify how the controlling contractor and entry employers must coordinate entry operations. Controlling contractors and entry employers may coordinate entry operations using any method that is effective, and this coordination need not involve a lengthy process.

One commenter expressed a concern that the coordination requirements would impose strict liability on controlling contractors for safe permit-space entry operations, meaning that the controlling contractor would be liable for another employer's breach of safety policy (ID–141, pg. 2). The final rule does not impose strict liability or any responsibility to ensure other contractors' compliance with the standard. Controlling contractors who are not entry employers have information sharing and coordination duties.

Another commenter asserted that, in an effort to comply with this coordination duty, the controlling contractor may impose redundant and unnecessary safety measures on other employers to protect the controlling contractor from liability (ID–120, pg. 2). This comment is speculative and unsupported by specific examples, so it is difficult for the Agency to respond to it other than to note that the final rule does not impose duplicative

requirements on employers, nor does the final rule require the controlling contractor to do so. OSHA believes that the final rule provides employers with sufficient flexibility in discharging their coordination duties. This flexibility should reduce duplication of effort and any associated costs.

Lastly, this commenter asserted that it would be difficult for a controlling contractor to fulfill the coordination duties absent explicit contractual authority to do so. *Id.* But under this final rule, controlling contractors are the only employers at a worksite that ''have overall responsibility'' for the site, so they are in the best position to coordinate the work schedule. If controlling contractors prefer to augment their authority through contractual provisions with subcontractors or host employers, this final rule does not prevent them from doing so.

Paragraph (h)(5)—Post-entry duties of controlling contractors and entry employers. This paragraph, which imposes obligations similar to those in the general industry standard, requires the controlling contractor to debrief an entry employer at the end of entry operations about the permit-space program followed and any hazards confronted or created during entry operations, and then relay appropriate information to the host employer. It also requires the entry employer to share the same information with the controlling contractor. These requirements serve three purposes. First, they ensure that the controlling contractor requests the information. Second, they establish an affirmative duty for the entry employer to provide this information. Third, they ensure that the host employer will receive information relevant to future permit-space entries. The intent is for entry employers to identify and share information about additional hazards, new procedures, or other new information not previously identified in the required pre-entry information exchange.

OSHA believes it is appropriate to place the duty on the entry employer to provide this information, as well as to require the controlling contractor to request it. The entry employer, by virtue of performing permit-space entry operations, will be the first employer to have access to new information. If the entry employer fails to communicate the information to the controlling contractor during the course of entry operations, the information transfer will occur during the entry employer debriefing.

There were no comments indicating the debriefing is unworkable or overly burdensome. OSHA made this duty reciprocal in the final rule, and removed the duty for the entry employer to provide information to the host employer to keep the rule internally consistent and consistent with the general industry standard, and to increase the effectiveness of the information exchange by placing the duty to share this information on both parties to the exchange, thereby ensuring that both the controlling contractor and entry supervisor exchange the specified information. Accordingly, § 1926.1203(h)(5)(i) requires the controlling contractor to retrieve the information, and § 1926.1203(h)(5)(ii) requires the entry employer to provide the information. OSHA does not view this as a significant change from the proposed rule because the proposal also required the same debriefing to occur, and it required the parties to share the same information (see proposed rule § 1926.1204(c)(2)). If no new hazards arose during entry and the entry employer's program did not change, the information exchange can be brief, just confirming that the original program was followed.

The final rule contains a new requirement for the controlling contractor to notify the host employer of any information it receives from debriefing the entry employer. OSHA added this provision to close a potential gap in the information-exchange process that could result because the final rule makes the controlling employer the hub of the information and exchange and does not require entry employers to provide information directly to the host employers, as the proposed rule did (see proposed rule § 1926.1204(c)(2)). As discussed above, OSHA has determined that the controlling contractor is in the best position to coordinate the exchange of this information. Therefore, the final rule shifts the duty to the controlling contractor. The host employer will still receive the information, but from the controlling contractor. OSHA expects that in many cases there will be no need for a separate exchange because the controlling contractor can relay this information as part of its regular communications with the host employer.

One commenter objected to the debriefing requirement, stating that it was unnecessary if other employers were not already scheduled to enter the space. If another employer does eventually enter the space, the commenter asserted, the subsequent employer's independent hazard assessment should suffice (ID–124, pg. 6). OSHA disagrees. The subsequent employer must make an independent hazard assessment, but the rationale for requiring information exchanges in the final rule still applies: that assessment may not reveal previously identified hidden or latent dangers or conditions, and the new entry employer would be less prepared to protect its employees than if it obtained the information that the controlling contractor received from debriefing the previous entrant.

A different commenter asserted that host employers have no need for information about newly constructed confined spaces, and that the requirement to provide information to the host employer is an unnecessary paperwork burden (ID–017, pg. 2). OSHA disagrees. It is important for the controlling contractor to notify the host employer of information about the host's property, particularly any new hazards identified during the entry. In many cases, the same controlling contractor may not be present for future construction activities involving the space, so the host employer's information will helpful for future entries.

Note to § 1926.1203(h)—host employer and controlling contractor not required to enter a confined space. The final standard also includes the note from proposed § 1926.1204(a) explaining that, unless a controlling contractor or host employer has, or will have, employees in a confined space, neither of these employers need to enter any confined space to collect the information specified in paragraph (h) of this section. This note applies to all of paragraph (h). This protects the employees of the controlling contractor and the host employer because entering confined spaces could expose those employees unnecessarily to the hazards of that space. Controlling contractors and host employers should not conduct such an entry unless there is a purpose to the entry other than just gathering information.

Paragraph (i)—Absence of a controlling contractor. Final § 1926.1203(i) provides that, in the event no employer meets the definition of a controlling contractor on a particular worksite, the host employer or other employer that arranges for permit-space entry work must fulfill the information-exchange and coordination duties of a controlling contractor. The general industry rule does not have any requirements for a controlling contractor and, therefore, has no corresponding provision dealing with the absence of a controlling contractor. OSHA added this requirement in response to a comment noting that some construction worksites do not have an employer that meets the definition of a controlling contractor (ID–124, pg. 6). Because the controlling contractor is at the hub of the information-exchange and coordination requirements, failing to address this

issue would leave a serious gap in a critical provision of the standard. When no employer on a worksite meets the definition of controlling contractor, it is still necessary for one employer to be responsible for information exchange and coordination, thereby ensuring that entry employers are aware of the known hazards associated with the space, and that different entities do not create new hazards to each other.

The employer that has the duty specified under final § 1926.1203(i) can be any employer that arranges for permit-space entry. It could be the host employer, a different contractor, or an entry employer that arranges for another entry employer to conduct entry operations. It is possible that the employer that has this duty will change based on the stage of construction. For example, if there is no controlling contractor for the project, but a contractor on the site arranges for entry employer A to enter a permit space, the final rule requires the contractor to share the information identified in final § 1926.1203(h) with entry employer A and to fulfill the controlling contractor's coordination and other information sharing duties in the standard. If entry employer A, after completing its entry operations and cancelling its permit, arranges for entry employer B to enter the permit space, then entry employer A assumes the controlling contractor duties with respect to entry employer B's confined space activities.

Requirements in § 1926.1203(h) and (i) do not alter contractual relationships between host employers or controlling contractors and subcontractors. One commenter noted that subcontractors often perform confined-space work because of their expertise in working in those spaces, and asserted that OSHA should not ''force general contractors to interject themselves into the work tasks of their sub-contractors'' in a way that would ''disregard . . . both specific contractual responsibilities and the expertise of sub-contractors.'' (124.1, pg. 3.) OSHA agrees, and crafted this rule to ensure that subcontractors have the information necessary to perform their work safely, particularly information about hidden or latent hazards that the subcontractor may not be able to discover quickly without endangering its entrants. A subcontractor may have expertise in welding inside a confined space, but that expertise will not help it avoid an invisible hazard it has no reason to suspect. (See ID–213.1, pg. 1, *supra,* for example of hidden dangers.) In this case, the host employer and controlling contractor need not develop welding expertise; instead, they must share information about hazards that they, or other employers with the appropriate expertise, previously identified.

Several commenters asserted that ''OSHA is attempting to force certain employers to assume a sufficient degree of control over confined space entry'' to ''substantially expand'' the tort law exposure of those employers (ID–078, pg. 2; ID–120, pg. 2–3; 153, pgs. 19–20). OSHA does not agree, and notes that comments urging OSHA to reduce potential employer liability in private rights of action are not relevant to OSHA's statutorily mandated obligations to promote worker safety.

Congress enacted the OSH Act to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions.'' 29 U.S.C. 651(b). Congress gave the Secretary of Labor the authority to promulgate mandatory occupational safety and health standards to achieve that goal.[17] *Id.* section 655. As OSHA explained in an October 23, 2006, letter to U.S. Congressman Cass Ballenger,

> nothing in health or safety standards issued by OSHA . . . determines the tort remedies available to injured workers. That matter is determined by the laws of the individual states. It is not our role at OSHA either to foster or to foil the efforts of plaintiffs' lawyers in state court proceedings. It is our responsibility, however, to undertake reasonable efforts '' . . . to assure so far as possible every working man and woman in the Nation safe and healthful working conditions,'' and OSHA's standards are therefore focused on addressing workplace hazards.'' In general, tort law remedies present entirely separate bodies of law that are available at common law, or as the result of state action, to anyone in the general public (including workers) who might be harmed by a wrongful act; they are not aimed specifically at correcting workplace hazards.

The OSH Act does not contain any private right of action allowing employees to recover for injuries or illnesses caused by hazardous work conditions. Instead, Section 4(b)(4) of the OSH Act makes clear that any effect of OSHA standards on state tort law is limited: ''Nothing in [the OSH] Act shall be construed to . . . enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.'' (29 U.S.C. 653(b)(4).) The plain language of section 4(b)(4) thus indicates that any standard OSHA promulgates generally has no effect on, and certainly cannot ''substantially expand,'' employees' rights under the state tort system with respect to workplace injuries and illnesses. See, for example, *Crane* v. *Conoco, Inc.,* 41 F.3d 547 (9th Cir. 1994) (''OSHA violations do not themselves constitute a private cause of action''); *Atlas Roofing Co., Inc.* v. *OSHRC,* 430 U.S. 442, 445 (1977) (''existing state statutory and common-law remedies for actual injury and death remain unaffected'' by the OSH Act); *Frohlick Crane Serv, Inc.,* v. *OSHRC,* 521 F.2d 628, 631 (10th Cir. 1975) (''It would appear that by this particular provision [section 4(b)(4)] Congress simply intended to preserve the existing private rights of an injured employee, which rights were to be unaffected by the various sections of the Act itself.''); *Jeter* v. *St. Regis Paper Co.,* 507 F.2d 973, 977 (5th Cir. 1975) (''It seems clear that Congress did not intend [the OSH Act] to create a new private cause of action, but, on the contrary, intended private rights to be unaffected thereby.'') .

OSHA recognizes that state courts in some circumstances use OSHA standards, including these final host-employer and controlling-contractor provisions, as evidence in a negligence action. (See, for example, *Knight* v. *Burns, Kirkley & Williams Constr. Co.,* 331 So.2d 651 (Ala. 1976).) But when they do so, any effect on tort law is a function of these state court decisions and is not in any way dictated by OSHA's standard. See *Summit Contractors, Inc.* v. *Sec'y of Labor,* 442 Fed.Appx. 570, 572 (D.C. Cir. 2011) (rejecting arguments that OSHA's multi-employer duties would increase common law liability for general contractors because ''such liability would arise only from a court's (hypothetical) later action under state law—not from the OSH Act itself'').

Other commenters submitted a variety of objections about the information-exchange provisions, including that the controlling contractor and host employer information-sharing requirements ''do not reflect an appropriate application of responsibilities, and expand the duties of general contractors in the residential construction industry'' (117.1, pg. 7), thereby requiring the host employer to maintain extensive files about each confined space located on its property, which ''would be impractical and infeasible in today's business context'' (153, pgs. 18–19). Commenters also complained that the coordination requirements were ''unworkable'' (219.2, pg. 40 (marked as pg. 37)). However, another commenter responded:

[17] The Secretary delegated those responsibilities to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. See 77 FR 3912 (Jan. 25, 2012).

Throughout the hearings, participants argued, on the one hand, that OSHA should simply extend the general industry standard to construction and, on the other, that the proposed standard would impose unprecedented and unwarranted burdens on controlling contractors, which would expose them to substantial liability. . . . [T]here is, in fact, little new in the proposed multi-employer provisions. And, there is nothing in the record that . . . suggested that the information-sharing requirements under § 1910.146 have proven to be either burdensome or unnecessary. . . . [Based on the record,] the provisions requiring information sharing between the entity that has the greatest familiarity with the worksite and contractors coming into the worksite for brief, discrete periods of times have proven to be effective means of assuring that employees can work safely in confined spaces without imposing notable burdens or liability on the host employers.

(220.2, pg. 13–14.) OSHA agrees with this comment. There are not many substantive differences between the new standard and the general industry standard, and employers have not raised significant obstacles to compliance with the general industry standard during the two decades following OSHA's promulgation of that standard. OSHA is confident that the new construction standard will also be workable.

Section 1926.1204—Permit-Required Confined Space Program

The permit-required confined space program is a critical component of new subpart AA. Except for ventilation-only entries conducted in accordance with § 1926.1203(e), the Agency requires each employer with employees who will enter a permit space to implement a written permit-space program that meets the requirements set out in this section (see final § 1926.1203(d)). Final § 1926.1204 is, therefore, specifically tailored to work activities conducted inside a space that meets the definition of a ''permit-required confined space'' (''permit space'') in final § 1926.1202. Technically, final § 1926.1204 sets out information and actions that must be included in the permit program, and the requirement to implement these steps is in final § 1926.1203(d), but employers should view § 1926.1204 as the main set of requirements for protecting their employees when entering a permit space.

In the preamble to the general industry confined spaces standard, the Agency observed that ''an employer who waits until the last minute before entry operations begin to develop a permit space program is unlikely to have properly trained and equipped personnel available'' (58 FR 4495 (Jan. 14, 1993)). Accordingly, OSHA designed final § 1926.1204, which is similar to § 1910.146(d), to require entry employers to plan the entry, and to implement the entry in accordance with that plan, to avoid endangering employees during the entry.

For the reasons identified in the Background section, above, OSHA is conforming the language of the permit-required confined space provisions in § 1926.1204 of the final rule to the corresponding provisions for general industry confined spaces at § 1910.146(d). The substance of this section generally is the same as the general industry standard. OSHA explains below the differences between the other paragraphs of the final rule and the general industry standard, and the significant differences between the final rule and similar provisions in the proposed rule. There is no discrete section of the proposed rule that corresponds directly to this section of the final rule, but OSHA also included most of the duties imposed by this final rule in the proposed rule. See, *e.g.,* proposed §§ 1926.1205 (atmospheric monitoring and testing); 1926.1209(c) (limiting entry) and (f) (safe termination procedures); 1926.1210(f) (attendant required); 1926.1210(j) (equipment); 1926.1212(a) (safe termination procedures); and 1926.1218 (equipment).

One commenter noted that a particular provision in the proposed rule (§ 1926.1218(a)(4)) referred to ''confined space operations,'' and suggested OSHA change that reference to ''confined space *entry* operations'' (ID–025, p. 4). The regulatory text in § 1910.146 refers to both ''permit space operations'' (§ 1910.146(g)(2)(iii)) and ''permit space *entry* operations'' (§ 1910.146(d)(3)) [emphasis added]. In this final rule, OSHA changed all references to confined space operations and permit-space operations to confined space *entry* operations or permit-space *entry* operations to maintain consistency. The terms ''confined space entry operations'' or ''permit-space entry operations'' refer to both actual entry into a space, and any planning or preparation made for the entry (*i.e.,* an employer can be engaged in ''entry operations'' before actually entering a confined space).

The introductory language in final § 1926.1204 provides that the entry employer must perform the procedures set forth in that section. OSHA simplified the introductory language from the language in § 1910.146(d), and edited the language to reflect this final standard's use of the term ''entry employer'' when discussing an employer who decides that employees it directs will enter a permit space. OSHA made this change to clarify which employers must comply with these procedures on a multi-employer worksite.

Paragraph (a). Final § 1926.1204(a), which is identical to § 1910.146(d)(1), requires an employer to implement an effective means of preventing all unauthorized entry into a permit space. These measures are necessary to prevent unauthorized entry into PRCSs, and to protect employees from encountering PRCS hazards. Under the final rule, it is the entry employer's responsibility to ensure that all unauthorized persons stay out of the established permit space, regardless of who employs them. Any unauthorized employer who enters a permit space could pose a danger not only to themselves, but also to workers already inside the space. The entry employer's duty to prevent unauthorized entry also extends to the prevention of unintentional entry, such as a person falling into a space or accidently entering a permit space because of confusion about where an entrance to a space leads. The duty also extends to members of the public passing near the construction site (*e.g.,* a sewer manhole) in order to protect the employees in the permit space.

This final provision makes no substantive change from the proposed rule. Proposed § 1926.1209(c)(1)(i) provided that employers use barriers or high-visibility physical restrictions, such as a high-visibility warning lines, to prevent unauthorized entry into a space. One commenter asserted that circumstances arise that make it unsafe to use the physical restrictions specified in proposed § 1926.1209(c)(1)(i) (ID–104, p. 3). For example, when employees perform work to rehabilitate or install a protective coating in a sewer, the employer must use devices such as cables and hoses that run from a compressor to the airless spray pump, and then into the manhole to the spray gun, resulting in a tripping hazard that could cause someone to fall into the manhole. In such situations, this commenter suggested that OSHA require only that the employer post danger signs. OSHA expects that signs by themselves will generally be inadequate to prevent an inadvertent fall into a manhole. Even if the employer has full control of the entrance to the permit space to and can guard against members of the public who cannot see the signs or read them, there are too many activities on a typical construction site for an employer to ensure that workers would not be distracted and fail to see the sign or the manhole. Manholes, like other fall hazards at a typical worksite, must be

guarded in a manner that meets the requirements of this standard and the applicable specifications of 29 CFR part 1926, subpart G—Signs, Signals, and Barricades and subpart M—Fall Protection.

Because OSHA is duplicating the general industry standard in this portion of the final rule, it does not specify the particular means of compliance. This approach provides employers with flexibility in complying with this provision by not limiting the measures required under this provision to physical restrictions only. The employers' means of preventing entry will be evaluated based on its effectiveness at accomplishing that task. The same explanation that OSHA provided for the general industry rule applies in the construction context as well:

> [I]f the workplace is so configured as to prevent access of unauthorized entrants into areas containing permit spaces, training, alone or in combination with signs, may prevent the unauthorized access to the spaces. Otherwise, covers, guardrails, fences, or locks will be necessary. It is the employer[']s responsibility to use whatever measures are necessary to prevent unauthorized entry.

58 FR 4495.

Paragraph (b). In final § 1926.1203(a), OSHA requires employers to identify and evaluate the hazards of permit spaces that employees will enter. Final § 1926.1204(b), which is identical to § 1910.146(d)(2), requires an employer that authorizes employees to enter a permit space to first conduct a thorough evaluation of that permit space to identify the presence and location of all hazards within the permit space. This hazard evaluation is necessary to ensure that the spaces are correctly assessed to make the permit-space program as effective in protecting employees as possible. This evaluation may be combined with the initial evaluation required by final § 1926.1203(a), or it may be conducted separately. OSHA anticipates that most employers who intend to enter a space will conduct a single evaluation that complies with the requirements of both §§ 1926.1203(a) and 1926.1204(b).

Paragraph (c). Final § 1926.1204(c), which is similar to § 1910.146(d)(3), requires an employer to develop procedures needed to facilitate safe entry operations into most permit spaces. The paragraph lists eight measures that employers must take. However, this list is not comprehensive: Some spaces may include unique hazards, locations, or configurations that require additional steps to ensure the safety of entrants. The subparagraphs in final § 1926.1204(c) provide specific elements of these required procedures.

Paragraph (c)(1). Final § 1926.1204(c)(1), which is identical to § 1910.146(d)(3)(i), requires an employer to identify the entry conditions that employers must meet to initiate and conduct the entry safely. For example, when an atmospheric hazard exists in the space and an employer must use personal protective equipment (PPE) to protect employees from the hazard, the employer must include in the acceptable entry conditions the type of PPE employees are to use (such as type of respirator) and the exposure levels at which the PPE would protect the employees from the atmospheric hazard. If the permit space contains physical hazards, the entry employer must ensure that the acceptable entry conditions include the methods used to protect employees from the physical hazards. If the employer does not satisfy the conditions specified in either example, or in any list of acceptable conditions, then the result is a prohibited condition, meaning that employees must not enter the space and must evacuate if they are already in the space.

When determining the acceptable entry conditions, the employer must consider the work employees will perform and the hazards that may result from that work. For example, an employer that plans to weld inside a confined space must account for the hazard resulting from the welding fumes and gases when identifying acceptable entry conditions. As another example, an employer who plans to introduce gases into a space to inert potentially flammable gases must take into consideration the effect of the inerting gases on the atmosphere because that process will generally result in an IDLH atmosphere.

Paragraph (c)(2). Final § 1926.1204(c)(2), which is identical to § 1910.146(d)(3)(ii), requires an employer to provide each authorized entrant or that employee's authorized representative an opportunity to observe any monitoring or testing performed in a permit space. Final § 1926.1204(c)(2) does not require employees and their authorized representatives to observe the specified activities; however, it provides employees and their authorized representatives with the option to observe should they choose to do so. OSHA added this requirement to § 1910.146 in 1998, along with several other employee participation requirements. The Agency explained that those requirements would ''function to provide a 'check' on human error in those cases where monitoring was improperly performed, and the Agency pointed to data demonstrating that human error in monitoring of a hazardous atmosphere was a critical element in many deaths in confined spaces (63 FR 66032 (Dec. 1, 1998)). OSHA also noted that its record indicated that many entrants would not choose to request to observe the monitoring, but stated ''it is reasonable to assume that allowing authorized entrants or their designated representatives to observe the testing of spaces will prevent a substantial portion of the accidents attributed . . . to human error'' (*id*). OSHA believes that this will also be the case under the final rule.

OSHA also believes that allowing employees and their authorized representatives to participate in this manner will contribute to the successful implementation of safe entry operations by enhancing their awareness of the hazards present in the confined space. Moreover, as OSHA noted when it added these observation requirements to the general industry standard, the employee participation requirements are consistent congressional intent and with a number of OSHA health standards that provide employees with the opportunity to participate actively in protecting their own safety and health and that of their co-workers (see discussion at 63 FR 66020–66021).

Paragraph (c)(3). Final § 1926.1204(c)(3), which is similar to § 1910.146(d)(3)(iii), requires an employer to include measures in the permit program to isolate a permit space or, where applicable, a physical hazard within the permit space (such as isolating mechanical hazards through lock out). The general industry standard refers only to ''isolating the permit space,'' while the new final rule also addresses isolating physical hazards within the permit space, such as by placing a physical barrier inside the permit space to eliminate the potential for employee contact with a physical hazard inside that space, for the reasons provided in the explanation of § 1926.1203(e)(1)(i) and (g)(1). It is important to isolate the entrants from the hazards that may exist in the continuous space, or may enter into the continuous space and eventually migrate to engulf the entrants. For example, if an entry employer has not isolated a particular area of a continuous system such as sewer system, then the entire continuous system is a confined space. If any part of that system contains material that has the potential for engulfing an entrant then the entire system is a permit space.

If an employer is able to isolate all of the physical hazards, then the employer might be able to reclassify the space as a non-permit space or enter under the alternative procedures in § 1926.1203(e). However, employers may still choose to enter under a permit program or may be required to do so if, for example, they isolate a physical hazard but cannot control an atmospheric hazard and must enter using respirators. The requirement to include the isolation measures in the permit program is critical to employee safety in those situations, as well when the employer is relying on isolation to prevent hazards from entering a space. Requiring the listing of the isolation method as part of the permit program is also useful to remind employers that if they are relying on the isolation to enter a confined space under the alternative procedures in § 1926.1203(e) or the reclassification under § 1926.1203(g), they must maintain that isolation or the permit program requirements will apply immediately.

If the employer is using isolation to protect the employees during the entry, then paragraph (c)(3) requires that the program include a method to ensure that the hazards remain isolated for the duration of the entry. Isolation methods provide the highest degree of assurance that the hazard will be kept away from the employees in the space, because isolation does not generally depend on the continued, proper operation of machinery (such as ventilation equipment) or PPE (such as respirators). If the space is such that the employer can demonstrate that it is infeasible to isolate the hazards, the employer need not include isolation measures in the permit program, but must eliminate or control the hazards in accordance with final § 1926.1204(c)(4) and § 1926.1204(e) (see final § 1926.1204(e)(1)). If the employer cannot maintain isolation or control the hazards, then the employer must terminate entry operations immediately.

Three commenters provided examples of how they believed it was possible to isolate portions of a confined space from other portions of the space. The first commenter addressed a scenario in which the employer is applying a protective coating to a sewer (ID–104, pp. 2–3). The commenter, an association representing members who apply protective coatings in sewers, asserted that the employer can isolate the permit space from the other sections of the sewer by running a bypass line upstream with pneumatic pipe plugs installed that provide a tight seal to prevent passage of air and liquids.

The second commenter, an association representing utility contractors who work regularly in sewers, noted that employers can sometimes block the flow of effluent into one part of a sewer system from a larger confined space by using pipe plugs upstream from where employers will conduct the work (ID–210, Tr. p. 187). In some cases, employers also use plugs to block off a portion of the sewer downstream from where an employer will conduct the work, and then purge and clean the workspace in between the plugs (ID–210, Tr. p. 188). In either scenario, the commenter stated that an employer can block the flow of air and effluent through the line by properly fitting pipe plugs to a pipe, pressurizing them with a few pounds of air, and either blocking in the plugs so they cannot fall out or using a ''double plug'' system (inserting two plugs into the same pipe ''so if one slips you will have a backup'') (ID–210, Tr. pp. 187, 189, and 199). The commenter acknowledged that there had been ''failures'' where the plugs exploded or did not function correctly and ''killed and injured workers,'' but characterized such incidents as occurring ''rarely'' and only as a result of incorrect installation or procedures (ID–210, Tr. p. 208). The commenter agreed that the proper procedures would normally include installing a bypass line upstream of the pipe plug to redirect any effluent and ensure that pressure does not build behind the pipe plug (ID–210, Tr. p. 208).

A third commenter, a different sewer-services association, also agreed that, in many cases, employers can use pipe plugs along with bypass lines and ''gate valves'' to prevent effluents from entering a section of a sewer system, but indicated that employers rarely use pipe plugs on pipes greater than 10 inches in diameter for significant periods of time (ID–211, Tr. p. 156).[18]

OSHA finds that the record is not conclusive as to whether pipe plugs, with or without bypass systems, are a reliable and effective means of isolating a sewer space to protect workers from engulfment and atmospheric hazards moving through a continuous system. The record, which also includes a number of fatalities and injuries associated with the use of pipe plugs (see the Final Economic Analysis), indicates that these plugs may fail as a result of improper installation and may not be appropriate for extended use in larger pipes, and that bypass systems are sometimes required to relieve the buildup of pressure that could dislodge the plugs. There is no evidence that the pipe-plug failures that occurred, even if the failures were purely the result of improper installation, would not occur again in the future for the same reason. Moreover, it is not clear from the record that a significant force such as a storm surge could not dislodge the pipe plugs, or that the failure of a bypass system could not lead to pressure building behind a pipe plug and dislodging it. Isolation through a bypass system, unlike the other examples of methods used to isolate hazards listed in the general industry standard and this final rule, would depend on the continuous operation of machinery. The pipe plugs and bypass systems may, therefore, merely be a means of controlling the hazards, rather than isolating them, because it is not clear that they would completely protect workers from exposure to these hazards.[19]

Paragraph (c)(4). Final § 1926.1204(c)(4), which is identical to § 1910.146(d)(3)(iv), applies to permit spaces with hazardous atmospheres and requires an employer to purge, inert, flush, or ventilate the permit space to eliminate or control the hazardous atmosphere before entry. The purpose of

[18] The same commenter also stated that most sewer manholes do not present an engulfment hazard because ''80 to 85 percent of all of the sewer manholes have pipe diameters of eight and ten inches or smaller entering them,'' and that it would take hours for engulfment to occur under these conditions because the Environmental Protection Agency engineering standards ''require that those pipes be sized to flow at 50 percent of maximum capacity during high flow periods'' (ID–211, Tr. p. 156). OSHA does not agree that limiting flow rate and capacity will eliminate the engulfment hazard; the engulfment would just take longer. These conditions do not isolate or eliminate the hazard, and the effluent could engulf or drown an employee who is unconscious or otherwise unable to leave the space before it fills the manhole, particularly if the employee is not able to keep his or her head above the floor. Therefore, the full permit-program protections in § 1926.1204 apply under these conditions unless the employer isolates or eliminates the hazard. However, if an employer can demonstrate that it can limit the rate and capacity of the flow, the employer could factor the potential time for engulfment or drowning resulting from this procedure into determining the type and location of an early-warning system that would provide adequate time for employees to exit a space.

[19] OSHA is leaving open the possibility that an employer could demonstrate that using pipe plugs in conjunction with bypass systems is an effective means of isolating a permit-required workspace from a continuous system. To do so, the employer must ensure that the procedure is appropriate for the conditions and use properly installed pipe plugs in conjunction with a bypass system to effectively isolate a workspace in a sewer system. Accordingly, the employer must ensure that the procedure isolates the workspace in fact from any engulfment hazard; OSHA would not view failure of the pipe plug or bypass system as an unforeseeable outcome. One of the commenters recommended using continuous air monitoring even if the space appears to be isolated (ID–210; Tr. pg. 202 (Kennedy)). OSHA agrees, and recommends that employers use continuous air monitoring under these conditions to provide early detection of any problems with the seal of the pipe plug.

this provision is to reduce employee exposure to atmosphere hazards in the permit space. Reducing exposure to hazards in the permit space through engineering practices, rather than relying on PPE as the primary protection for employees, is the most direct and effective means to reduce risk to the employee, whether the airborne substances pose a health risk of inhalation or a safety risk of fire or explosion.[20]

In § 1926.1204(c), OSHA requires these means of reducing exposure levels—purging, inerting, flushing, or ventilating—''as necessary'' to eliminate or control atmospheric hazards. With respect to the actions in paragraph (c)(4), ''as necessary'' means that an employer must take at least one of these actions if the permit space has a hazardous atmosphere. The only permit spaces where these actions are not necessary are those in which the space does not have a hazardous atmosphere, as defined in § 1926.1201, but is designated as a permit space because it contains another hazard, such as an engulfment hazard, inwardly converging walls, or other recognized serious safety or health hazard.

The means used to reduce risk must be appropriate to the characteristics of the hazardous atmosphere and it must also ''eliminate or control'' the hazard to produce ''safe permit space entry operations (§ 1926.1204(c)). For example, inerting a space that already has an oxygen-deficient atmosphere would be an inappropriate action, whereas ventilating with additional outside air would help to increase oxygen levels.

The Agency notes that it previously issued letters responding to questions about the conditions under which the general industry standard permitted employers to work in a space with flammable gas in concentrations greater than 10 percent of the LFL. See August 15, 1996, letter to Larry Brown, and September 4, 1996, letter to Macon Jones. OSHA subsequently clarified its position on those issues in a 2011 response to the U.S. Chemical Safety and Hazard Investigation Board, stating that the general industry standard ''prohibits entry into atmospheres greater than 10 percent of the [LFL], unless the flammable/explosive hazard has been controlled through inerting of the space to reduce the oxygen content below that needed to support combustion.'' (ID–223, p.3).

OSHA takes the same approach with respect to this construction standard. While employers may use a variety of means to reduce the LFL to 10 percent or below, thus avoiding an LFL hazardous atmosphere as defined in § 1926.1202, OSHA reiterates that this new final rule for confined spaces in construction prohibits employees from working in any atmosphere above 10 percent LFL *except* when the employer successfully inerts the space so as to effectively remove the hazard of an explosion. See discussion of paragraph (1) of the definition of ''hazardous atmosphere'' in § 1926.1202 of this final rule. Even when the space is successfully inerted, an oxygen-deficient atmosphere generally results such that employers must prohibit entry unless they provide appropriate PPE or other equipment that is capable of protecting the employee from the oxygen-deficient atmosphere. See definition of ''prohibited condition'' in final § 1926.1202 and § 1926.1204(c)(7). As of the promulgation date of this final rule, OSHA is unaware of PPE that could provide sufficient protection to an employee from an explosion involving a flammable atmosphere. OSHA notes that some practices such as the use of static electricity capture, non-static footwear, non-sparking tools, explosion-proof lighting, a nitrogen blanket, or misting may reduce the likelihood of igniting an explosion, but none of these practices would eliminate the possibility of ignition. Another example of a practice that would not provide protection from a spark, fire, or explosion in an LFL atmosphere is using fire watch personnel who have the responsibility of looking for a spark, fire, or explosion and then responding under emergency procedures. It is unlikely that fire watch personnel could react quickly enough to ensure that employees would not be exposed to an explosion. Therefore, the employer must not rely on these methods in a permit program to protect employees working in a hazardous atmosphere in excess of 10 percent LFL. A permit program must identify the means of reducing the atmosphere to or below the 10 percent LFL or provide for inerting and all necessary PPE. OSHA added a note to § 1926.1204(c)(4) to make explicit the requirement for an employer to inert a space and provide appropriate PPE if employees will work in a space where less than 10 percent LFL cannot be achieved.

Paragraph (c)(5). Final § 1926.1204(c)(5) requires an employer to determine that monitoring devices will detect an increased atmospheric hazard level in the event that the ventilation system malfunctions, and to do so in adequate time for employees to safely exit the space. This requirement is from proposed § 1926.1208(b). There is no corresponding provision specified in § 1910.146 that mirrors final § 1926.1204(c)(5) with respect to the use of ventilation to control atmospheric hazards as part of a permit program; however, the preamble to the alternative ''ventilation only'' procedures in § 1910.146(c)(5)(i)(B) noted a similar requirement as a condition of using the ''ventilation only'' approach instead of the full permit program requirements:

> In order for the space to be considered safe, the atmosphere within the space after ventilation may not be expected to approach a hazardous atmosphere. This is necessary so that, if the ventilation shuts down for any reason (such as loss of power), the employees will have enough time to recognize the hazard and either exit the space or restore the ventilation.

58 FR 4488. OSHA is including that requirement in the final rule as a condition of the ''ventilation only'' alternative procedures in final § 1926.1203(e), and OSHA is applying the same requirement to the use of ventilation to control atmospheric hazards under a full permit program because the atmospheric hazards that could be present in a PRCS are the same as the atmospheric hazards present in a final § 1926.1203(e) alternate-procedures space. Therefore, the need to plan for ventilation failure is the same: employers must have a system in place that quickly detects an increased atmospheric hazard in the event that the ventilation system stops so that employees can escape safely whether the entry is conducted under the permit program requirements of § 1926.1204 or the alternative ''ventilation only'' procedure allowed by § 1926.1203(e). As with the general industry standard (see explanation of § 1910.146(c)(5)(i)(B) above), compliance with this requirement means that employers must ensure that the mechanical ventilation will control the atmospheric hazards at levels that are *below* the levels at which they are harmful to entrants so that if the ventilation fails (for example, because of a loss of power) the employees will have sufficient time to escape without exposure between detection of an increase in atmospheric level and exit.

[20] This approach is consistent with longstanding industry safety practice and OSHA policy. Under its ''hierarchy of controls'' policy reflected in a number of standards, OSHA only allows employers to rely on respirators or other PPE to the extent that engineering controls to eliminate the hazard are not feasible. See, *e.g.,* §§ 1910.134(a) (respiratory protection) and 1926.103 (respiratory protection); 1910.1000(e) (air contaminants); 1910.95(b) (occupational noise exposure) and 1926.101 (hearing protection).

Proposed § 1926.1208(b)(2) contained provisions similar to those in final § 1926.1204(c)(5). One commenter requested that OSHA provide more detail as to how an employer can comply with this requirement, suggesting that employers take into consideration ''levels of detection by the monitoring system'' and ''increases in atmospheric hazards as workers are evacuating'' (ID–140, p. 5 (labeled p. 4)). The provision is performance-based, which allows each employer the flexibility to determine how it will use monitoring to comply with the requirement. As OSHA stated in the preamble to the proposed rule, monitoring is the primary method for detecting an increase in atmospheric hazard levels. OSHA therefore requires monitoring under this final standard to detect ventilation system failure. In addition, employers should be aware of other indicators of increasing atmospheric hazard levels, in addition to monitoring, that may be useful in supplementing monitoring to provide faster detection of ventilation failures, including changes in noise levels, air flow, or pressure, as well as signs, symptoms, and characteristic effects of exposure to the atmospheric hazard (72 FR 67365 (Nov. 28, 2007)).

Paragraph (c)(6). Final § 1926.1204(c)(6), which is identical to § 1910.146(d)(3)(v), requires an employer to provide entrants protection against external hazards. This requirement is in addition to the provision in paragraph (c)(2) of this section that an employer must provide barriers as necessary to prevent unauthorized entry. This requirement will protect employees in and around the PRCS, such as attendants, or employees entering or exiting the permit space, from being struck by individuals or objects outside the PRCS that may fall into the space, or that could injure the employees when they are near the PRCS. In some scenarios, employers must use guardrails, covers, signs, barricades, or other protective measures to achieve this purpose. Each of these measures must comply with the applicable specifications of 29 CFR part 1926, subpart G—Signs, Signals, and Barricades) and subpart M—Fall Protection.[21] For example, as stated in the preamble for the general industry rule, ''If entrants face a substantial risk of injury due to unauthorized entry, due to objects falling into the space, or due to vehicular hazards during entry into and exit from the space, then barriers would be required'' (58 FR 4997).

Paragraph (c)(7). Final § 1926.1204(c)(7), the first clause of which is identical to § 1910.146(d)(3)(vi), requires an employer to ensure that conditions remain acceptable for entry for the full duration of an authorized entry. The employer will often discharge this duty by complying with the entry-supervisor provisions in § 1926.1210(c) of this final rule. By requiring the employer to have an individual on site with this authority, there is a greater likelihood that the employer will conduct the required monitoring and adhere to the acceptable entry conditions, which is critical to the successful implementation of safe PRCS procedures.

OSHA also added a clarification in paragraph (c)(7) allowing employees to work in a permit space that contains a hazardous atmosphere, but *only if:* (1) ventilating or other measures prescribed in § 1926.1204(c)(4) will not reduce the hazardous atmosphere sufficiently to allow employees to work safely within the permit-space; (2) the employer can demonstrate that use of PPE will protect the employees from that atmosphere; *and* (3) the employer ensures that the entrants use the PPE correctly. Otherwise, the entry employer must prohibit entry, or ensure that authorized entrants exit the space immediately, whenever the atmosphere inside the space meets the definition of a ''hazardous atmosphere'' specified in final § 1926.1202. These provisions are implicit in the general industry standard, but OSHA made them explicit here to avoid any suggestion that an employer could specify an ''acceptable'' condition that would include a hazardous atmosphere, absent adequate PPE.

For example, if the employer plans to have employees in a portion of a storm sewer with an oxygen-deficient atmosphere, and it is not feasible to address the oxygen deficiency through measures prescribed in § 1926.1204(c)(4), then the employer may allow employees to enter with closed-circuit respirators that would protect the employees from the oxygen-deficiency hazard. If, however, the employer is unable to protect employees from these hazards using any of these methods, then it must prevent the employees from entering the space. Likewise, if a confined space contains a flammable atmosphere exceeding 10 percent, of the LFL, and the employer cannot feasibly reduce this level to the non-hazardous level (10 percent or below), then the employer must inert the atmosphere to address potential explosion hazards (and use supplied-atmosphere respirators to protect the employees from the oxygen-deficiency hazard), or terminate entry. See also the previous discussion of final § 1926.1204(c)(4).

Paragraph (c)(8). Final § 1926.1204(c)(8) requires an employer, before removing an entrance cover, to eliminate conditions that could make it unsafe to remove the cover. Some examples of such conditions are when the cover is under pressure or when the cover is preventing exposure to an ignition source near a hazardous atmosphere. There is no corresponding general industry provision that has requirements similar to final § 1926.1204(c)(8); it is drawn from the requirements in proposed §§ 1926.1210(b), 1926.1216(c) and 1926.1217(c).

As OSHA explained in the preamble to the proposed rule, conditions such as heat and pressure within the PRCS may pose a danger to employees removing an entrance cover. In such cases, the cover may be blown off in the process of removal, or superheated steam may suddenly escape and burn the employee. Another example involves removal of a sealed cover that results in the release of toxic gases (72 FR 67368).

To protect employees from the hazards inside the PRCS as required by this provision, the employer must make a hazard assessment before removing any cover. Accordingly, the provision does not permit removal of the cover to the PRCS until the employer identifies all hazardous conditions related to the cover's removal, and then eliminates those hazards.

One commenter recommended that OSHA refer to any ''hazardous'' condition, rather than just a ''condition,'' that could make it unsafe to remove the cover, and include language in the text of the final rule to address rescue personnel confronted with an entrance cover that is unsafe to open (ID–086, pp. 5–6). OSHA disagrees that adding the word ''hazardous'' to the provision would be helpful because the sentence already is clear that the condition at issue is such that removing the cover could be unsafe. The provisions of § 1926.1204 do not require entry employers to address in their permit programs the hazards that rescue personnel may face during rescue, nor do these provisions require the rescuers to develop separate written permit programs for rescue. However, § 1926.1211(b) requires that rescuers be informed of, and trained to recognize, hazards such as entry covers that would be unsafe to open and might affect the

[21] All additional requirements of subparts G and M remain in effect.

ability of the rescuers to perform rescues safely.

Paragraph (d). Final § 1926.1204(d), which is similar to § 1910.146(d)(4), requires each employer to provide all equipment used for confined-space operations at no cost to employees, maintain the equipment, and ensure that employees use the equipment correctly. OSHA believes that providing such equipment, and using it correctly, will prevent injuries and fatalities in permit spaces. Accordingly, the purpose of this paragraph is to ensure the availability and proper use of whatever equipment is necessary to reduce the dangers to employees posed by permit spaces.

In proposed § 1926.1218, OSHA required employers to provide several specific categories of equipment and included a catch-all ''any other equipment necessary for safe confined space operations.'' One commenter suggested that OSHA clarify that the employer must provide this equipment to employees at no cost (ID–211, Tr. p. 46). The § 1910.146(d)(4) language OSHA is adopting for this final rule specifies that employers must provide this equipment at no cost to employees. Final § 1926.1204(d) varies from the language of the general industry standard only in that it specifies that the employer must provide the listed equipment to ''each employee,'' whereas § 1910.146(d)(4) refers generally to ''employees.'' Accordingly, in appropriate cases, if an employer fails to provide the necessary equipment as required, OSHA may issue separate citations with respect to each individual employee not provided with the proper equipment.

Paragraph (d)(1). Final § 1926.1204(d)(1), which is identical to § 1910.146(d)(4)(i), requires an employer to provide necessary equipment for conducting adequate testing and monitoring. This equipment is essential for protecting employees from atmospheric hazards.

Section 1926.1204(a)(4) of the NPRM proposed requiring employers to use a direct-reading instrument to perform required testing or monitoring. One commenter asserted that direct-reading instruments are not available for ''airborne lead dust'' or ''paint that has a multitude of solvents in the formula'' (ID–077, p. 1). Another commenter asserted that the final rule should permit alternatives to direct-reading instruments when such instruments are not available (ID–025, p. 3). Final § 1926.1204(d)(1) requires an employer to test or monitor for atmospheric hazards that exceed PELs set to protect against immediate injury or illness, which is not the case with lead.[22] Furthermore, OSHA disagrees with the other commenters' premise that direct-reading instruments would be unavailable to detect solvents. It is the employer's responsibility to ensure that such equipment is available in spaces where the final rule requires such monitoring, and the commenter did not indicate that is infeasible to do so. For example, employers can use photoionization detectors for detecting solvents.

Another commenter suggested that OSHA should require equipment calibration daily to avoid equipment malfunction (ID–025, p. 4). OSHA is not making this change because the provision as written in this final standard provides employers with flexibility in complying with the requirements to maintain testing and monitoring equipment, and to use it properly. For example, the employer can follow the manufacturer's instructions, or the recommendations of a qualified person, regarding the frequency of equipment calibration. The manufacturers' instructions are sufficient for this purpose because equipment manufacturers are most familiar with the components, configuration, and safe and healthful operation of their equipment; this information places them in the best position to specify the proper maintenance, calibration, and use of this equipment under these circumstances. Alternatively, an individual who meets the definition of a qualified person in final § 1926.1202 would have, through a recognized degree or professional standing or through extensive knowledge, the demonstrated ability necessary to make decisions that will ensure the proper maintenance, calibration, and use of equipment used in confined spaces.

Another commenter suggested that OSHA should provide a specific calibration standard because manufacturers are starting to distinguish between various types of calibrations, such as ''bump calibration'' and ''field calibration'' (ID–028, p. 6). OSHA is not adopting this commenter's suggestion because developing a calibration standard is beyond the scope of this rulemaking.

Paragraph (d)(2). Final § 1926.1204(d)(2), which is identical to § 1910.146(d)(4)(ii), requires an employer to provide ventilating equipment necessary to establish acceptable entry conditions. For example, the employer must provide forced-air mechanical-ventilation equipment when using such equipment to establish acceptable entry conditions for entry operations under final § 1926.1204. Use of the required equipment when appropriate is a significant factor in protecting the employees from hazardous atmospheres.

Paragraph (d)(3). Final § 1926.1204(d)(3), which is substantively identical to § 1910.146(d)(4)(iii), requires an employer to provide all communications equipment necessary to ensure that an attendant can communicate effectively with entrants in accordance with §§ 1926.1208(c) and 1209(e). Not all spaces require equipment for effective communication between the attendant and entrants, but the employer must provide it when necessary. Such equipment may be necessary, for example, if the entrants cannot hear an attendant because the permit space is sealed off.

Another example where the employer must provide such equipment is when an attendant needs audio-visual equipment to perform his or her duties under the final confined spaces in construction rule for more than one permit space at a time. Examples of such equipment include electronic audio and video tools that enable the attendant to detect what is occurring inside the multiple PRCSs without the attendant having to, simultaneously, be physically present at each PRCS entrance. If an employer chooses to require an attendant to assess entrants' status in multiple PRCSs, the employer must provide all of the equipment necessary for the attendant to fulfill the required duties. OSHA believes that expecting an attendant to be able to adequately perform these duties without the equipment necessary to accomplish the attendant's duties under this final rule will jeopardize the health and safety of the entrants.

There is no provision in § 1910.146 or the proposed rule that explicitly requires electronic communication while attending multiple permit spaces, but that standard implies that such communication is necessary for the attendant to fulfill the required duties. In the proposed rule, OSHA requested comments on the means, other than electronic equipment, for an attendant to adequately assess entrants' status in multiple PRCSs. Both of the commenters who addressed this issue agreed that electronic equipment, either wireless or hard-wire, is the only means

[22] OSHA includes identification requirements in many of its hazard-specific standards, and employers working in a confined space must still comply with those requirements absent a specific exception, but those requirements are separate from this confined-space standard and are not subject to change as part of this rulemaking.

of accomplishing this duty, and there is no contrary information elsewhere in the record (ID–108, p. 2; –116, p. 3). The lone exception could be when an attendant is assessing entrants' status in two separate spaces that are immediately adjacent such that the employer can ensure assessment of both spaces with a single attendant positioned to fulfill the required duties without using observation equipment. Based on the information in the record as a whole, final § 1926.1204(d)(3) requires the employer to ensure each attendant uses electronic equipment as necessary when attending to multiple PRCSs that are not immediately adjacent to each other. This result also is consistent with final § 1926.1209—Attendant Duties.

Several commenters expressed concern that communications equipment would unnecessarily occupy limited room in a confined space when either spoken communication or line–of–sight communication would suffice (ID–033, p. 3; –061, p. 4; –077, p. 1; –101, p. 2). These comments ignore the premise of the requirement: final § 1926.1204(d)(3) explicitly states that the duty to provide communications equipment arises only when such equipment is necessary, which means that the employer must provide communications equipment only when verbal communication or line-of-sight communication are ineffective.

Another commenter asserted that radio communication is not always reliable (ID–094; p. 1). As OSHA stated in the preamble discussion of proposed rule § 1926.1210(j)(1), such equipment may consist of a variety of types (for example, cell phones, two-way hand-held radios), so long as it is effective (72 FR 67370 (Nov. 28, 2007)). If there is weak or unpredictable signal strength when using the device, the device would not comply with final § 1926.1204(d)(3) and the employer must remove the entrants until the attendant is situated to perform the required duties effectively. Effective, reliable communication equipment is essential in relaying information to attendants, entry supervisors, and other authorities regarding potentially dangerous changes in the PRCS conditions. Such information is critical to assess the hazards within the space and to provide information regarding methods appropriate for protecting or removing employees from those hazards.

Paragraph (d)(4). Final § 1926.1204(d)(4), which is identical to the general industry standard at § 1910.146(d)(4)(iv), requires an employer to provide PPE when feasible engineering and work-practice controls do not adequately protect employees. The employer must provide this equipment at no cost to the employees. When the employer uses equipment that is subject to an OSHA requirement, such as respirators or ear plugs, the employer must ensure that the equipment and its use comply with the applicable OSHA requirements. For example, failure to use the appropriate filters in a respirator can render its use ineffective, and would be a violation of the respiratory protection standard (§ 1926.103). The Note to paragraph (d)(4), which is not in the general industry standard, clarifies this point with respect to respirators because they are commonly used in confined spaces. OSHA believes that providing, using, and maintaining the appropriate PPE in accordance with OSHA requirements that address the identified hazard will protect employees from serious injury or death. However, as noted in the discussions of § 1926.1204(c)(4) and (c)(7) above, PPE cannot provide protection against some hazards such as explosions.

Paragraph (d)(5). Final § 1926.1204(d)(5), which is similar to § 1910.146(d)(4)(v), requires an employer to provide lighting equipment that complies with the illumination standard (29 CFR 1926.56) and is sufficient to allow employees to work safely and exit the space quickly in an emergency. The corresponding provision in § 1910.146(d)(4)(v) does not explicitly note that lighting equipment must meet other applicable OSHA standards; however, proposed rule § 1926.1210(j)(2) explicitly noted this requirement, and OSHA concludes that it is appropriate to include this clarification in the rule text. At least one commenter indicated that OSHA should explicitly cross-reference the applicable illumination standard (ID–011, p. 1), and OSHA did so here. OSHA also added language requiring approval of the lighting equipment for the ignitable or combustible properties of the specific, gases, vapors, dusts, or fibers present in the PRCS. OSHA took this additional language from the hazardous location requirements for the electrical equipment standard § 1926.407(b)(2)(i); a note to § 1926.407(b)(2)(i) references NFPA 70, the National Electric Code, which lists hazardous gases, vapors, and dusts by groups characterized by their ignitable or combustible properties. The additional language ensures that employees will use safe lighting equipment and wiring methods under the particular hazardous conditions present. This additional language does not increase employers' responsibilities under this final rule because the language merely reminds employers of an existing obligation they have under § 1926.407 when using lighting equipment under the specified conditions. As noted above, employers engaged in work covered by this standard must also comply with all other OSHA requirements unless specifically excluded.

OSHA believes that final paragraph (d)(5) will assist employees in conducting safe PRCS operations, including safe escape from a PRCS if necessary. OSHA notes that the provision would require an employer to provide lighting equipment that allows an employee to quickly exit a PRCS in the event of an emergency: For example, the loss of the primary power source. In this example, there are at least two ways in which an employer could fulfill this duty: (1) The employer can provide a reliable back-up power supply, or (2) the employer can provide employees with adequate flashlights, headlights, or similar hand-held lighting equipment. Providing adequate illumination for employees to exit quickly from a PRCS during such an emergency will enable employees to safely escape from a hazardous condition.

Paragraph (d)(6). Final § 1926.1204(d)(6), which is substantively identical to § 1910.146(d)(4)(vi), requires an employer to provide barriers and shields when required by this standard (see § 1926.1204(c)(6)). OSHA believes that this proposed requirement is necessary to keep unauthorized employees from entering the PRCS and to help protect employees inside the PRCS from being struck by objects and individuals falling into PRCSs. When providing this equipment, employers must ensure that it complies with other applicable OSHA requirements. For example, guardrails must meet the requirements of 29 CFR 1926.502(b) (Guardrail systems), and covers must conform to 29 CFR 1926.502(i) (Covers).

Paragraph (d)(7). Final § 1926.1204(d)(7), which is identical to § 1910.146(d)(4)(vii), requires an employer to provide equipment that facilitates safe entry to, and exit from, a PRCS. In doing so, employers must ensure that this equipment, including its use by employees, complies with the requirements of the applicable OSHA requirements (for example, 29 CFR part 1926, subpart X, for ladders and stairways, and 29 CFR part 1926, subpart L, for scaffolds). This equipment is critical under emergency-exit conditions to ensure that employees exit a PRCS in a timely and safe manner.

Paragraph (d)(8). Final § 1926.1204(d)(8), which is identical to § 1910.146(d)(4)(viii), requires an employer to provide rescue and emergency equipment as needed. Final § 1926.1204(d)(8) ensures that the proper equipment is available for rescuing authorized entrants in the event of an emergency in a PRCS, whether it is the employer's equipment or equipment belonging to a rescue service.

Paragraph (d)(9). Final § 1926.1204(d)(9), which is similar to § 1910.146(d)(4)(ix), requires an employer to provide any other equipment needed to safely enter or exit the permit space or to perform permit-space rescue. OSHA recognizes that there is a wide variety of permit spaces, and believes that the requirement to provide all additional equipment necessary to perform permit-space entry and exit ensures that the appropriate equipment is available at the job site so employees receive adequate protection from hazards present during permit-space operations. Similarly, OSHA believes the requirement to provide additional rescue equipment as needed addresses hazards that may be unique to a PRCS rescue, thereby ensuring that employees receive adequate protection from these hazards under emergency conditions. Accordingly, the employer must identify this additional equipment, if any, after conducting an assessment of the PRCS as required by the applicable sections of this final rule.

Proposed § 1926.1218(a)(4) specified that an employer provide any other equipment necessary for safe ''confined space operations.'' For consistency, a commenter suggested replacing the term ''confined space operations'' with ''confined space entry,'' which OSHA used frequently in the proposed rule (ID–025, p. 4). In response to this comment, OSHA adopted in final § 1926.1204(d)(9) the corresponding language in § 1910.146(d)(4)(ix), which uses the term ''entry.'' OSHA added the phrase ''safe exit from'' to this final provision to clarify that employers must provide equipment needed for employee safety during the entire period they are involved in confined space operations, which includes ensuring that employees can exit safely from the space.

Paragraph (e). Final § 1926.1204(e), is similar to § 1910.146(d)(5), but includes language from proposed § 1926.1215—Continuous system permit spaces, as well as editorial revisions to the introductory text.

Paragraph (e)(1). Final § 1926.1204(e)(1) requires an employer to test the permit space for acceptable entry conditions. Information obtained from testing is vital to the identification of atmospheric hazards in the space. In instances when the permit space is fixed or isolated, the testing will be straightforward. Final § 1926.1204(e)(1), however, also acknowledges that accurately testing the full extent of a permit space, or even a workspace within a larger permit space, may be infeasible because the PRCS is large or is part of a continuous system. The size of the space could limit the value of the initial testing of entry conditions because the conditions in the work space could be affected by substances in the connected spaces and, therefore, subject to change. In such cases, employers must comply with the additional procedures in final § 1926.1204(e)(1)(i)–(iii), which include pre-entry testing to the extent feasible, continuous monitoring if such monitoring is commercially available, and an early warning system that monitors continuously for non-isolated engulfment hazards.

Final § 1926.1204(e)(1) is similar to the corresponding provision for general industry confined spaces at § 1910.146(d)(5)(i), with three exceptions. First, OSHA reorganized the two requirements in § 1910.146(d)(5)(i), pre-entry testing followed by continuous monitoring, into separate paragraphs in final § 1926.1204(e)(1)(i)–(ii). Second, OSHA also added the requirement for employers to provide an early warning system in final § 1926.1204(e)(1)(iii). OSHA separated the two paragraphs to emphasize that an employer performing confined-space operations under final § 1926.1204(e)(1) may be performing work under a special set of conditions in a portion of a large space a continuous system. As such, the employer must comply with the special procedures in § 1926.1204(e)(1)(i) through (iii) (testing, continuous monitoring, and an early warning system), as well as paragraphs (e)(2) through (6), to account for migrating hazards. One example of this type of confined space is a sewer in which a storm or other activity at another location could send water or hazardous materials into the space in the sewer where employees are working.

Third, OSHA added language clarifying that it is the employer's responsibility to demonstrate that isolation of the space is infeasible. This requirement is implicit in § 1910.146(d)(5)(i), so OSHA added this language to make the requirement explicit and clarify that an employer who determines that isolation of a space is infeasible is most able to provide information that supports this decision.

Paragraph (e)(1)(i). Final § 1926.1204(e)(1)(i) requires an employer to test to ensure that acceptable entry conditions exist immediately before entry occurs. The testing must occur ''to the extent feasible,'' meaning that even if the employer makes a determination that it is infeasible to isolate the space and the test results may not accurately reflect all potential hazards in the space, that employer still has a responsibility to perform normal testing in the workspace prior to entry to ensure that a hazardous atmosphere does not already exist in that workspace.

Paragraph (e)(1)(ii). Final § 1926.1204(e)(1)(ii) requires an employer to continuously monitor a non-isolated permit space unless the employer can demonstrate that the equipment needed for continuous monitoring is not available commercially. Note that this requirement is different than the monitoring requirement for isolated spaces in § 1926.1204(e)(2) because paragraph (e)(1)(ii) does not include an option for periodic monitoring *unless* continuous monitoring is not commercially available (paragraph (e)(2) allows for periodic monitoring in certain other circumstances). Non-isolated permit spaces, relative to other PRCSs, have an enhanced risk of unexpected changes in hazardous atmosphere levels because atmospheric hazards could migrate from other areas, so OSHA only permitted periodic monitoring in non-isolated spaces in the absence of a viable alternative. By monitoring the space continuously, employers should detect rising levels of a hazardous atmosphere or the introduction of a new atmospheric hazard before it is too late to warn the authorized entrants and evacuate them from the space.

Final § 1926.1204(e)(1)(ii) is similar to the corresponding provision for general industry confined spaces at § 1910.146(d)(5)(i), except that OSHA allows for the absence of commercially available equipment that could make it infeasible to conduct continuous monitoring. In such instances, OSHA still requires periodic monitoring to increase the likelihood of identifying as quickly as possible a hazardous atmosphere migrating from another part of a continuous system. Several commenters were unsure what OSHA means by ''not commercially available'' (ID–106, p. 3; –129, p. 3; –152, p. 3). Typically, equipment is ''commercially available'' if it is offered for sale to the public or to the relevant employers. As OSHA stated in the preamble to the proposed rule, one example of when

continuous monitoring may not be commercially available involves particulate atmospheric hazards (72 FR 67381). In these cases, the employer must be able to demonstrate that periodic monitoring is of sufficient frequency to ensure that the atmospheric hazard remains at a safe level, as planned (*id*). OSHA added a cross-reference to final § 1926.1204(e)(2) to inform employers of the frequency with which to monitor periodically for hazards if continuous monitoring is not commercially available.

Several commenters asserted that OSHA should require a competent person to perform the testing and monitoring (ID–025, p. 3; –086, p. 5). OSHA agrees that the tester must be competent, but is not revising the text of the regulation to refer to a competent person because OSHA believes that the existing language, taken directly from the general industry confined-spaces standard, adequately addresses the competency of the tester. In this regard, the general industry confined-spaces standard does not use the term ''competent person,'' but does use terms such as ''attendant'' and ''entry supervisor'' that require a level of experience and training regarding testing or monitoring equivalent to that of a ''competent person,'' as defined in § 1926.32(f). For example, final § 1926.1208(b) and § 1910.146(h)(2) both require an authorized entrant to possess the necessary knowledge to properly test the atmosphere within a confined space (see also § 1926.1204(d)). Under the training provisions of both § 1910.146(g) and final § 1926.1207, an employer must provide specific training to an employee designated as an ''authorized entrant''; this training must establish proficiency in the duties an authorized entrant must fulfill under these standards. In this respect, the scheme of both § 1910.146 and this final rule accomplish the commenters' objective, which is to design a procedure whereby the person performing the atmospheric tests has sufficient knowledge and experience to conduct the tests properly.

Different commenters asserted that OSHA should identify the specific locations for monitoring equipment in the permit space (ID–106, p. 2; –129, p. 2). For example, these commenters suggested that OSHA require an employer to place monitoring equipment at the merger point between the larger space and the non-isolated entry point. The continuous-monitoring requirement is a performance-based standard, and OSHA does not agree that it is necessary to specify particular locations for the placement of monitoring equipment, especially when technology and monitoring practices may evolve in the future. Accordingly, employers have flexibility to choose their preferred methods and equipment to monitor, so long as the monitoring equipment, when used in accordance with manufacturer requirements, detects rising levels of a hazardous atmosphere or the introduction of a new atmospheric hazard before it is too late to warn the authorized entrants and evacuate them from the space. For additional information about atmospheric monitoring, see May 12, 2009, letter to Edwin Porter, Jr.

Another commenter asserted that an employer must use more than one piece of continuous-monitoring equipment to effectively detect hazards (ID–031, p. 1). Final § 1926.1204(e)(1)(ii) does not require the use of more than one piece of continuous-monitoring equipment; however, the provision also does not specify that employers can accomplish monitoring using only one piece of equipment. The number of monitors an employer would need to ensure the isolation or control of atmospheric hazards depends on the PRCS's size, configuration, and conditions; the requirement here is that employers use whatever number of monitors is necessary to ensure the isolation or control of the atmospheric hazards. OSHA also selected the performance-oriented approach so that this standard will not become outdated through advances in monitoring technology.

Paragraph (e)(1)(iii). Final § 1926.1204(e)(1)(iii) requires an employer to provide an early warning system that will detect non-isolated engulfment hazards. OSHA included this requirement in proposed § 1926.1215(a)(2), but there is no corresponding § 1910.146 provision. As OSHA stated in the preamble to the proposed rule, this equipment addresses migrating engulfment hazards that are present in a non-isolated PRCS. For example, these hazards can result when runoff from a heavy storm upstream of a sewer flows downstream into the area in which employees are working. OSHA noted in the preamble of the proposed rule that migrating hazards, especially those hazards migrating from distant areas, are common in non-isolated spaces (72 FR 67382). Accordingly, this requirement is necessary to protect authorized entrants from the additional hazards associated with these spaces, including engulfment hazards.

One commenter suggested that the requirement for an early warning system will force employers to hire more employees for the purpose of monitoring the space (ID–059). Neither the comment nor the rest of the record provide support for this suggestion. To the contrary, employers have flexibility in determining whether to hire additional employees to comply with final § 1926.1204(e)(1)(iii). An employer may position detection and monitoring devices, without the need to hire additional employees, to provide the early warning. A full discussion of the costs of early warning systems is included in the Final Economic Analysis in this document.

One commenter appeared to assume that this provision required using equipment, not additional employees, to monitor engulfment hazards. This commenter asserted that such equipment is too expensive to maintain (ID–098, p. 1). This commenter did not provide any support for the assertion, or any specific information about problems associated with maintaining or operating such equipment. OSHA notes that the use of properly calibrated equipment to detect non-isolated engulfment hazards is a current practice by many in the industry and has been since before OSHA issued the proposed rule (see transcripts of stakeholder meetings, available at: *https://www.osha.gov/doc/reference_documents.html*). Without a specific reason why an early warning system is infeasible, OSHA retained this requirement in the final rule.

Another commenter asserted that an early warning system requirement will require an employer to evaluate and calibrate such systems for each potential hazard (ID–216). It is not clear from the comment, however, that the commenter understood that the early warning system described in the proposal (and this provision) must detect only non-isolated *engulfment* hazards, not each potential atmospheric hazard. Because engulfment hazards involve the movement of tangible substances (*e.g.,* water, mud, sand), systems may detect movement of different substances using the same methods (*e.g.,* a motion detector or other sensor triggered by the movement of water, mud, sand, or another substance through a particular area). The commenter did not provide any specific examples of equipment that would require calibration in a way that would be burdensome to the employer or diminish the effectiveness of the equipment in providing an early warning.

The same commenter suggested as an alternative requiring employers to disconnect, blind, lockout, or isolate all pumps and lines that may cause contaminants to flow into a confined space, and then continuously monitor that space. The alternative approaches

mentioned by the commenter appear to be directed at isolating the hazards. If the employer effectively isolates or eliminates all physical hazards within the entire permit space, then it might be possible for the employer to avoid the permit program altogether if employees can enter the space through the alternative procedures in § 1926.1203(e), or if there are no atmospheric hazards and the permit space is reclassified in accordance with § 1926.1203(g). OSHA anticipates, however, that in most cases employers in non-isolated spaces will need to comply with § 1926.1204(e)(1)(iii) because it may not be possible for employers to eliminate all physical hazards from a continuous system.

Other commenters asserted that the requirement to use an early warning system exposes the individuals installing the system to hazards (ID–098, p. 1; –120, p. 4). OSHA disagrees with these commenters' assertion. There are many types of early warning systems available, including flow monitors that are suspended in an upstream manhole such that no employee needs to climb down into the confined space to place or retrieve the monitor. These devices are capable of detecting engulfment hazards approaching from upstream without exposing the individuals installing them to additional hazards. Employers may also be able to lower cameras or other devices into the space, or conduct visual inspections from above the space without entering at all.

One commenter was unsure when, where, and how an employer must implement an early warning system (ID–124, p. 5). Another commenter asserted that OSHA should explicitly recognize that the use of electronic monitoring constitutes an acceptable early warning system (ID–107, p. 3). In response to these comments, OSHA notes that, once the employer determines that isolation of the space is infeasible, then the employer must implement an early warning system in accordance with final § 1926.1204(e)(1)(iii). The employer has flexibility in determining what type of system to use based on information it receives about the space and its hazards, and based on the employer's experience working in similar spaces. The system can be as simple as posting observers with communication equipment in safe locations (*e.g.,* outside an open manhole) at distances far enough upstream from the work area to timely communicate a warning to the entrants working downstream. Another method would be to use detection or monitoring devices upstream that will alert an attendant, or activate alarms at the entrants' work area, in sufficient time for the entrants to safely avoid upstream engulfment hazards moving in their direction. So long as the use of electronic monitoring alerts authorized entrants and attendants of non-isolated engulfment hazards in sufficient time to safely exit the PRCS, the employer will be in compliance with final § 1926.1204(e)(1)(iii).

Paragraph (e)(2). Final § 1926.1204(e)(2) requires an employer to continuously monitor the space unless the employer can demonstrate that the equipment for continuously monitoring a hazard is not commercially available or that periodic monitoring is sufficient to ensure the control of atmospheric hazards at safe levels. Final rule § 1926.1204(e)(2) is similar to the corresponding provision for general industry confined spaces at § 1910.146(d)(5)(ii), except that final § 1926.1204(e)(2) generally requires continuous monitoring as did the proposed rule (see proposed § 1926.1215(a)(1)). Several commenters supported the requirement to monitor permit spaces continuously (ID–105, p. 2; –106, p. 2). One of these commenters asserted that ''periodic monitoring could be difficult to interpret, which could potentially lead to situations where an employer's monitoring scheme fails to adequately monitor rapidly changing atmospheric conditions that could pose risks to workers who enter a confined space'' (ID–105, p. 2).

In the typical PRCS in a construction setting, it is often difficult for the employer to predict with reasonable certainty the levels of hazardous atmospheres. In many instances, the employer will have little or no past experience with the particular PRCS, and will lack reliable historical data on hazard levels. Also, the PRCS may change as construction work progresses in ways that may cause unexpected increases in hazard levels. For example, changes to the wall of a PRCS may increase the level of hazardous gasses in the PRCS (see also ID–213.1, describing examples of how construction spaces can include hidden dangers, such as paints or sealants that can release toxic fumes if triggered by welding or other sources of heat.) In addition, construction equipment in the PRCS may discharge hazardous gasses into the space at a higher rate than anticipated.

In short, construction work follows a less predictable course than work covered by the general industry standard and, thus, requires more frequent atmospheric monitoring. Because of this high level of unpredictability, OSHA believes, generally, that continuous monitoring is necessary to protect affected employees, especially the entrants. This provision enables the employer to recognize deteriorating conditions quickly, and to identify new atmospheric hazards in time to take the actions required to protect employees.

However, the Agency recognizes that, for some PRCSs, especially those PRCSs entered and monitored repeatedly over a significant period of time and found to have a stable atmosphere (such as a remote location that is not near potential sources of atmospheric hazards), the employer may be able to show that periodic monitoring will be sufficient to ensure that the conditions in the PRCS remain within acceptable entry conditions. However, when the employer uses periodic monitoring, the monitoring must be of sufficient frequency to ensure the control of atmospheric hazards at planned levels, and capable of detecting new hazards in time to protect the employees. In some cases, continuous monitoring may not be possible; for example, continuous monitoring typically is not available when the atmospheric hazard is a particulate. Therefore, when the employer can show that periodic monitoring is adequate, or can demonstrate that the technology for continuous monitoring of the atmospheric hazard is not available, OSHA will permit the employer to use effective periodic monitoring instead of continuous monitoring.

The preamble discussion of proposed § 1926.1205(a)(3) provided the following factors that OSHA will consider in determining whether an employer has used an appropriate monitoring frequency: The results of tests allowing entry; regularity of entry (*e.g.,* daily, weekly, monthly); effectiveness of previous monitoring activity; and knowledge of the hazards (72 FR 67362). One commenter suggested adding the following factors to this list: (1) The type of the work performed in the space (*i.e.,* hot versus cold work); (2) the time period the confined space remains unmonitored (*i.e.,* requiring monitoring every 20–30 minutes), and; (3) lunch breaks (ID–132, p. 3). Knowledge of the hazards from the list in the proposed rule covers the first of these suggested factors (type of work), while regularity of entry from the proposal's list covers the third suggested factor (lunch breaks). Effectiveness of previous monitoring activity from the proposal's list addresses the second suggested factor (the time period the permit space remains unmonitored). Accordingly, an employer must account for the development of hazardous atmospheres during periods when no atmospheric monitoring occurs in the space to

determine whether entry conditions remain at safe levels over these periods. For example, if the space remains unmonitored for just a few minutes prior to reentry, and previous monitoring regularly indicates that acceptable entry conditions continued to exist over this period, then an employer may conclude that it is not necessary to monitor again prior to reentering the space. However, if the space remains unmonitored for a longer time and previous monitoring indicates that atmospheric hazard levels increase over this period, then an employer must evaluate and monitor the space again before reentering it.

Some commenters asserted that OSHA must define the term ''periodic monitoring'' to avoid confusion among the regulated community (ID–075, p. 10; –129, p. 2;–152, p. 2). The frequency with which it is necessary to monitor a confined space differs based on the particular facts and circumstances. OSHA provided the factors listed in the previous paragraph to assist employers in determining when periodic monitoring is necessary; however, final § 1926.1204(e)(2) maintains performance-based language, which OSHA believes will provide employers with flexibility in complying with this final rule. Moreover, there was no indication in the record that the longstanding use of the term ''periodic testing'' in § 1910.146 is causing the level of confusion suggested by the commenters.

Paragraph (e)(3). Final § 1926.1204(e)(3), which is identical to § 1910.146(d)(5)(iii), requires an employer to test for particular substances in a pre-determined order: oxygen, then combustible gases and vapors, and finally toxic gases and vapors. The preamble to the general industry confined-spaces standard noted that this procedure represents generally accepted safe work practices, and explained the specified order as follows:

> A test for oxygen must be performed first because most combustible gas meters are oxygen dependent and will not provide reliable readings in an oxygen deficient atmosphere. In fact, the Johnson Wax Company (Ex. 14–222) stated that 'there is [a] specific (sensor dependent) oxygen level below which the combustible gas sensor will *not* respond at all [emphasis was supplied in original].' Combustible gases are tested for next because the threat of fire or explosion is both more immediate and more life threatening, in most cases, than exposure to toxic gases.

(58 FR 4499). OSHA also included this same requirement in the proposed § 1926.1205(a)(1), and received no comments challenging the validity of this approach. OSHA remains convinced that the priority assigned to testing or monitoring atmospheric hazards by final § 1926.1204(e)(3) remains valid, and believes that this requirement is critical to the health and safety of employees involved in confined-space entry.

OSHA notes that final § 1926.1204(e)(3), like the proposed rule, does not require an employer to test for combustible dust. There currently are technological limitations on testing for airborne combustible dust in a timely manner; in addition, unlike flammable vapors, in situations in which airborne combustible dust reaches a minimum combustible concentration, the dust cloud generally is dense enough to detect with the naked eye.

Paragraph (e)(4). Final § 1926.1204(e)(4), which is identical to § 1910.146(d)(5)(iv), requires an employer to provide an authorized entrant or employee authorized representative with the opportunity to observe testing or monitoring. See the discussion of final § 1926.1204(c)(2) for an explanation of the importance of providing an opportunity an opportunity for observation to entrants or their representatives.

Paragraph (e)(5). Final § 1926.1204(e)(5), which is similar to § 1910.146(d)(5)(v), requires an employer to reevaluate a PRCS if there is ''some indication'' that the previous evaluation was inadequate and an authorized entrant or that entrant's authorized representative asks an employer to reevaluate the space. This requirement ensures that entrants, or their representatives, can provide a check on potential human error in the monitoring process before they are potentially exposed to harm. This requirement is consistent with other requirements to allow employee observation of testing results, the reasons for which are set forth in the explanation of § 1926.1204(c)(2). In some cases employees who did not observe the initial monitoring process may notice something about the equipment or space that calls into doubt the initial evaluation, but in other cases this requirement serves as a corollary to the general observation requirements: an employee or employee representative who observes the initial evaluation of the space pursuant to § 1926.1204(c)(2) and notes a problem with that testing may request a re-evaluation of the space under § 1926.1204(e)(5).

Section 1910.146(d)(5)(v) requires an employer to reevaluate when an authorized entrant or the entrant's authorized representative ''has a reason to believe'' the initial evaluation may have been inadequate. Otherwise, this provision of the final rule is identical to § 1910.146(d)(5)(v). Examples of indications that the evaluation of the permit space was inadequate include: improper use of monitoring equipment (*e.g.,* monitoring devices have low battery life or noticeable damage; monitoring devices improperly calibrated; measurements taken in improper locations); employees noting physical hazards not identified in the evaluation; and inconsistent monitor readings without adequate explanation.

Addressing an example in proposed § 1926.1207(a)(3), one commenter was unsure who would make the final decision of whether there is a reasonable basis for believing that a hazard determination is inadequate (ID–120, p. 4). Specifically, the commenter presented a situation in which an employee provides an alleged basis for believing that a hazard determination is inadequate, but the employer finds that the basis is not reasonable. Under final § 1926.1204(e)(5), the employer may repeat the test, alter the test to assess additional aspects of the space, or assess whether a change occurred in the use or configuration of the space after testing. If such a change occurred, then the employer must reevaluate the space. Therefore, compared to the more subjective language in the general industry standard (*i.e.,* ''has reason to believe''), the reevaluation requirement in this final provision (*i.e.,* ''some indication'') is more objective and based on the observable conditions, thereby reducing ambiguity.

Paragraph (e)(6). Final § 1926.1204(e)(6), which is identical to § 1910.146(d)(5)(vi) except for non-substantive clarifications and grammatical changes, requires an employer to immediately provide the results of testing conducted in accordance with final § 1926.1204 to each authorized entrant or that employee's authorized representative. This requirement will ensure that employees and their representatives have the information necessary to identify potential inadequacies in the testing and take action under paragraph (e)(5) of this section to avoid unsafe entries. In some cases the testing may reveal specific conditions that fall within an employee's expertise or may be relevant to an individual health condition of the employee. For example, if an employee knows that he or she has a particular sensitivity to even low levels of a substance that would not otherwise result in a hazardous

atmosphere, the employee could review the test results and alert the employer if that substance is detected so that the employer can provide appropriate measures to protect the employee. See the discussion of final § 1926.1204(c)(2) for further explanation of this requirement.

Paragraph (f). The introductory text of final § 1926.1204(f), which is identical to § 1910.146(d)(6), requires an employer to provide at least one attendant outside a PRCS while an authorized entrant is performing confined-space operations. Although an attendant does not have the overall responsibility for employee safety and health assigned to the entry supervisor, the attendant is a crucial link between authorized entrants and the entry supervisor, and is essential for proper rescue operations. See the discussion in § 1926.1209 of this final standard for further explanation of the attendant's duties and the importance of the attendant in confined-space operations.

Paragraphs (f)(1) and (f)(2). In final § 1926.1204(f)(1), OSHA authorizes the permit program to allow for an attendant to perform his or her required duties, including assessing authorized entrants' status and meeting the requirements of § 1926.1209 for more than one permit space, similar to the requirement specified in the proposed rule at § 1926.1210(f)(3). Under final § 1926.1204(f)(2), the permit program may allow an attendant to fulfill his or her assessment duties for one or more spaces from a remote location provided the attendant is capable of fulfilling all attendant duties under § 1926.1209 for all spaces to which the attendant is assigned from that remote location. Final § 1926.1204(f)(1) and (f)(2) are similar to the note in the general industry confined-spaces standard at § 1910.146(d)(6). OSHA acknowledges that, although it is best to have an attendant outside each PRCS, there may be situations when one attendant can effectively fulfill the attendant duties in multiple PRCSs. The ability to assess entrants' status in multiple PRCS sites allows employers maximum flexibility in providing for the safety of employees when site-specific factors permit the attendant to do so. For instance, in some circumstances a single attendant equipped with modern technologies such as an automated monitor/alarm system and audio-video equipment may be able to assess entrants' status in multiple sites and react to emergency conditions as effectively as a single attendant at each space.

While paragraph (f)(1) sets forth performance-based measures, OSHA believes that an attendant's ability to assess entrants' status in multiple permit spaces while adequately performing attendant duties is dependent on several factors, that include: (1) the number of permit spaces the attendant assesses simultaneously; (2) the degree and number of the hazards; (3) how effective the assessment technology used is at assessing entrants' status and the conditions in the permit space (*i.e.,* is there a system in place for the attendant to track, from a remote location, who is coming in and out of a permit space); and (4) the distance between the multiple permit spaces. This provision may preclude a single attendant from serving as the attendant for multiple spaces if the employer also designated the attendant to provide non-entry rescue service. In most cases, an attendant with non-entry rescue responsibility must be physically present to retrieve immediately the entrant absent the availability of equipment that would enable the attendant to perform the rescue task remotely and successfully. As noted in the criteria above, the degree of the hazard may affect the timing of entrant retrieval and, thus, the physical proximity required for an attendant who has non-entry rescue responsibility (*e.g.,* if the permit space contains combustible gases that present a dangerous fire hazard, the attendant must be capable of retrieving the entrant immediately).

One commenter suggested that OSHA provide a maximum distance from which one attendant can assess entrants' status in multiple PRCSs (ID–059.1, p. 1). OSHA did not mandate a maximum distance because there are a number of factors that could influence the proper distance from which an attendant can assess entrants' status in multiple PRCSs while remaining in compliance with the applicable attendant requirements under this final rule. For example, some of the factors could be the particular circumstances at the worksite (the location and accessibility of the permit space), the visual acuity and observation skills of the attendant, and the equipment provided to the attendant. This approach provides the most flexibility to employers.

Paragraph (g). Final § 1926.1204(g), which is identical to § 1910.146(d)(7), requires an employer to specify, in its permit program, the means and procedures it will use to ensure that a single attendant is capable of effectively fulfilling the attendant duties for multiple confined spaces if an emergency occurs in one of the spaces. As specified in the final preamble to § 1910.146 and the note to proposed § 1926.1210(f)(3)(ii), effective assessment procedures include procedures to ensure that the attendant can respond adequately to emergencies. If the attendant needs to devote his or her entire attention to one of the spaces or conduct non-entry retrieval, the attendant must have a backup ready to assume the attendant duties for the other space or order the evacuation of that space.

A commenter asserted that paragraph (g) also should include requirements for: (1) testing and charging electronic equipment used to assess entrants' status in multiple PRCSs; (2) the use of equipment within acceptable limits in accordance with Federal Communications Commission (FCC) guidelines; and, (3) attendant training (ID–108.1, p. 2). In response, OSHA notes, first, that final § 1926.1204(d) requires employers to maintain equipment provided for compliance with this final rule, which includes properly testing and charging the equipment. Second, this final rule works in conjunction with other federal laws, and compliance with FCC guidelines is a matter best addressed by the FCC. Third, final § 1926.1207 requires the employer to train all employees, including attendants assessing multiple permit spaces, on the provisions of the standard so that the employees can effectively perform their designated duties under this standard. Thus, OSHA concludes that the final standard already includes the duties requested by the commenter, and that this final standard provides employers with appropriate flexibility in performing these duties.

Paragraph (h). Final § 1926.1204(h), which is identical to § 1910.146(d)(8) except for minor clarifications, requires each employer to specify the names of each person who will have a particular role in confined-space operations, characterize those roles, and train the named people accordingly. In the final rule, OSHA clarified that each employer must designate each and every employee assigned to a specific role under this final rule. This provision will enable employers, employees, and OSHA to identify which employees need to receive what training under final § 1926.1207.

One commenter was uncertain whether the attendant and the entry supervisor must be different employees (ID–124, p. 8). The definition of ''entry supervisor'' in final § 1926.1202 includes a note explaining that an entry supervisor also may serve as an attendant or an authorized entrant. This note is identical to the note in the general industry confined-spaces standard at § 1910.146(b). OSHA

included this note to parallel the general industry standard and because OSHA's enforcement experience demonstrates that, when the entry supervisor has adequate training, he/she is capable of serving simultaneous roles effectively. Moreover, proposed § 1926.1210(h) specifically stated that an entry supervisor could serve simultaneously as an attendant or an authorized entrant, which is consistent with this final rule, and OSHA did not receive any comments indicating that this dual role was infeasible or inappropriate.

Paragraph (i). Final § 1926.1204(i), which is nearly identical to § 1910.146(d)(9), requires an employer to have and implement effective procedures for summoning rescue services (including procedures for summoning emergency assistance in the event of a failed non-entry rescue), performing rescue, and preventing unauthorized personnel from attempting rescue. The only difference from the general industry requirement is that OSHA added a parenthetical to note that employers have a duty to summon emergency assistance in the event of a failed non-entry rescue.

Several commenters were unsure which employer must summon rescue (ID–025, p. 4; –150, p. 3). Another commenter asserted that the attendant should summon rescue (ID–210, Tr. p. 357). Final § 1926.1204(i) applies to any employer, including a controlling contractor or host employer, that has its own employees performing confined space operations. Each such employer must designate an attendant, and final § 1926.1209(g) requires the attendant to summon a rescue service when needed. When multiple employers are operating in the same space, the employers must coordinate the procedures for summoning a rescue service as part of their general coordination duties under §§ 1926.1203(h)(4) and 1926.1204(k). This provision will ensure that procedures are in place for the timely and effective rescue of entrants when necessary.

Paragraph (j). Final § 1926.1204(j), which corresponds to the requirements in § 1910.146(d)(10), requires an employer to develop procedures for the development, issuance, use, and cancellation of an entry permit; the final provision also is similar to proposed § 1926.1212(a). The permit is one of the most crucial elements of a permit program because it provides specific instructions for monitoring and addressing hazards in a particular space. See the discussion to final §§ 1926.1205 and 1926.1206 for further explanation on the importance of developing and using entry permits for confined-space entry. In the final rule, OSHA added a clarification that these procedures must cover the safe termination of entry operations, which must include procedures for summoning emergency assistance in the event that non-entry rescue fails (see discussion of backup emergency assistance in final § 1926.1211).

One commenter was unsure which employers must comply with final § 1926.1204(j) (ID–120, p. 4). Final § 1926.1204(j) applies to any employer, including a controlling contractor or host employer, that has its own employees performing confined space operations.

Paragraph (k). Final § 1926.1204(k) requires an employer to develop and implement procedures for coordinating confined-space entry when multiple employers are performing work simultaneously that could affect conditions in a permit space, a requirement derived from proposed § 1926.1204(d). In the general industry confined-space standard, § 1910.146(d)(11) requires coordination procedures when multiple employers are working simultaneously ''as authorized entrants.'' This final provision differs from § 1910.146(d)(11) by addressing the need to coordinate work activities through the controlling contractor, as well with employers working outside the permit space when their work could foreseeably affect conditions within a confined space. The controlling contractor (or the employer specified in § 1926.1203(i)) and each entry employer are responsible for coordinating work activities among different employers to protect confined space entrants under final § 1926.1203(h)(4), and entry employers must ensure that their permit programs specify when and how they will share information with the controlling contractor in a timely manner in accordance with § 1926.1203(h)(4) and (h)(5)(ii). The permit program also must address how the entry employer's employees are to receive and transfer information about a confined space from the controlling contractor in accordance with § 1926.1203(h)(2), and how the entry employer will ensure that it implements coordination instructions from the controlling contractor. In addition, the entry employer still has the duty of including in its permit program steps to ensure coordination, even absent action by the controlling contractor. Such steps might include evaluation of work and practices being performed by other employers that could affect conditions inside the space, and coordinating with those employers to ensure safe conditions inside the confined space. For example, if an entry employer sees another employer setting up blasting equipment next to the permit space, the entry employer must check with that employer to ensure that the blasting activity will not take place when an entrant is in the permit space. For additional explanation of the entry employer's responsibilities for coordination, see the discussion of § 1926.1203(h)(4).

Paragraph (l). Final § 1926.1204(l), which is identical to § 1910.146(d)(12), requires an employer to develop and use procedures for terminating an entry permit and entry operations; the final provision also derived from proposed §§ 1926.1212(a) and 1926.1214(d). See the discussion of final § 1926.1205(e) for further explanation of the need to develop and use procedures for terminating an entry permit and entry operations, including closing the entry portal. Also, OSHA responded to the relevant comments to proposed § 1926.1212(a) in its discussion of final § 1926.1204(j).

Paragraph (m). Final § 1926.1204(m), which is similar to § 1910.146(d)(13), requires an employer to review its permit-space program whenever the procedures prove inadequate, and to revise those procedures when necessary. Section 1910.146(d)(13) requires the employer to review its program when *the employer has reason to believe that* the measures taken are inadequate. OSHA revised this language in this final rule by clarifying that the objective circumstances, not the employer's belief, must be the basis of the review. See the discussion of final § 1926.1205(f) for further explanation of the need to review an entry permit and to make revisions as necessary.

In addition, OSHA modified the note under paragraph (m) from the language used in the corresponding note to the general industry standard at § 1910.146(d)(13). OSHA added the phrase ''including, but not limited to'' in this final provision to clarify that the examples in the note are not an exhaustive list.

Paragraph (n). Final § 1926.1204(n) is identical to § 1910.146(d)(14) except for grammatical revisions, and requires an employer to review its permit-space program at least every year and make revisions to its procedures as necessary; this provision also expands upon, and clarifies, the proposed rule at § 1926.1214(b). The Agency moved the comma that appears after ''as necessary'' in § 1910.146(d)(14) to appear after ''1926.1205(f)'' in this final rule to clarify that this provision requires an employer to review cancelled permits within one year after each entry. The

Agency notes that, in interpreting the same language in the general industry standard, OSHA permitted employers to rely on documentation of quarterly reviews, rather than cancelled entry permits, in conducting its annual review, so long as that documentation contains the same information required to be in the cancelled entry permits, including ''any information regarding problems encountered during entry operations that was recorded to comply with paragraph (e)(6)'' and ''any revision of the program that resulted from such problems.'' See October 21, 1993, letter to John Anderson. The Agency will also accept the equivalent documentation under this construction final rule. Some commenters asserted that requirements to review the program are pointless because they do not ensure that employers will discover hazards in a timely manner (*i.e.,* they will discover any problems after the fact) (ID–075, p. 10;–099, p. 2;–101, p. 2). OSHA did not design final § 1926.1204(n) to ensure that employers discover hazards during a particular confined-space entry operation; the Agency designed other sections of this final rule for that purpose, such as § 1926.1203(h) and final § 1926.1204(m). As OSHA explained in 72 FR 67381 of the preamble to the proposed rule, the purpose of this annual review is to evaluate the effectiveness of the permit program and the protection provided to employees involved in PRCS entries during this period. OSHA understands that some employers will use the same comprehensive permit program for many different spaces in conjunction with more specific information provided on the permits for individual spaces. This requirement will help ensure that employers complete future PRCS entries in a similar manner if the entries were successful, or make changes to the permit program to improve future entry operations if any problems or concerns occurred (72 FR 67381).

One commenter was unsure whether OSHA based the 12-month review period on a calendar year or cancellation of a permit (ID–075, p. 10). This 12-month period is a calendar year because the purpose of final § 1926.1204(n) is to ensure that no more than 12 months separates the date the employer cancels or terminates a confined-space entry and the date the employer reviews its confined-space entry operations for deficiencies. OSHA's experience with the general industry standard indicates that a review, conducted once per calendar year, is sufficient to achieve this purpose, and OSHA did not receive any comments to the contrary. Therefore, if an employer conducted a review of its permit-space program each calendar year, regardless of how many entries it conducted in that calendar year, it will be in compliance with this requirement. Employers may conduct reviews more frequently as appropriate, but this final provision does not require this frequency and, therefore, provides employers with the most flexibility in determining when to conduct this annual review.

The note to paragraph (n), which is identical to the note following § 1910.146(d)(14), clarifies that employers need not conduct separate reviews of each individual permit program implemented during the calendar year; a single review of all entries during the calendar year will suffice. Another commenter asserted that OSHA should require a similar annual review for entry operations performed under the alternate procedures specified by final § 1926.1203(e) and 1926.1203(g)(1) (ID–060, p. 2). Employers who complete a confined space entry entirely under the alternative procedures set forth in final § 1926.1203(e) do not have to comply with the requirements of final § 1926.1204 (see final § 1926.1203(e)(1)). Employers need fewer precautions to ensure the safety of employees working within or near confined spaces when they can use the alternate procedures under final § 1926.1203(e) or reclassify the permit space under § 1926.1203(g)(1). If there is any change to these spaces that would result in a hazard not addressed by these alternative procedures, then the full permit program and the requirements of final § 1926.1204, including the annual review, will apply.

Section 1926.1205—Permitting Process

Section 1205 sets forth the required process for establishing, suspending and cancelling entry permits. This process is important because it helps the employer determine if conditions in the permit space are safe enough for entry, and it requires the involvement of the entry supervisor, thereby ensuring that a person with the qualifications needed to identify permit-space hazards, and the authority to order corrective measures for their control, will oversee entry operations. The provisions in final § 1926.1205 are similar to the provisions in the general industry confined spaces rule at § 1910.146(e); however, OSHA changed the title of the section from ''permit system'' in the general industry standard to ''permitting process'' in the final rule to minimize the possibility for confusion if a permit space was established that might be referred to as a system, such as a sewer system.

Paragraph (a). Final § 1926.1205(a), which is almost identical to § 1910.146(e)(1), requires each entry employer to prepare, prior to entry into a PRCS, an entry permit containing all of the information specified in § 1926.1204(c) (practices and procedures for ensuring safe entry). This provision differs slightly from § 1910.146(e)(1) because it refers to ''each entry employer,'' whereas § 1910.146(e)(1) refers to ''the employer.'' OSHA made this change to clarify which employer on a multi-employer worksite has duties under final § 1926.1205(a).

OSHA emphasizes that the process of preparing a permit is considerably more than preparing a simple checklist; it requires careful attention and planning. The permit must list all measures necessary for making the particular permit space safe for entry; if the permit omits some procedures, serious consequences could result. Entry permits are a critical component of the safety process for preparing to enter a confined space because they provide key information about hazards in the PRCS, and the methods used to protect employees from those hazards. The permits also specify who is authorized to perform work within the PRCS, their duties, and the extent of their authority with respect to safety in and around the PRCS. The Agency believes the use of this administrative tool is essential to the employer with employees entering a permit space to ensure that the employees will complete the work within a PRCS safely. The process of preparing the permit, as well as the permit itself, also can be useful to the controlling contractor and other employers working near the confined space because it provides a readily accessible means of identifying the work performed and the provisions needed to ensure worker safety. Making the information on the permit accessible to employers and employees in and around the PRCS also allows them to maintain an elevated awareness of the conditions within the PRCS, as well as the equipment and procedures necessary for safe PRCS entry operations.

One commenter noted that multiple employers may have employees working in the same space, and was unsure whether each employer must prepare an entry permit under final § 1926.1205(a) (ID–120, p. 4). When more than one employer is performing confined space entry, one permit will suffice, provided the controlling contractor and entry

employers properly coordinate the entry operations of the multiple employers as required under §§ 1926.1203(h)(4) and 1926.1204(k), and the permit identifies all of the hazards and safety measures required for all of the work conducted in that space.

Paragraph (b). Final § 1926.1205(b), which is identical to § 1910.146(e)(2), requires the entry supervisor to sign the permit before entry begins. Although the employer remains ultimately liable for compliance with this standard, the entry supervisor's signature underscores to the employer and the entry supervisor the importance of their determination that the PRCS entry operation meets the prerequisites for safe entry listed in the permit. OSHA believes that signing the form makes it more likely that the entry supervisor and his or her employer will address the items listed on the form than if they do not have no to sign the form. Moreover, the entry supervisors may change during the course of the entry, so it is important to identify who completed each evaluation in the event that questions arise.

Paragraph (c). Final § 1926.1205(c), which is identical in substance to § 1910.146(e)(3), requires an employer to make the completed entry permit available to all authorized entrants, or their authorized representatives, at the time each employee enters the space. One of the keys to protecting employees from PRCS hazards is for both employers and employees to know the location of the PRCSs at the job site, the characteristics of the hazards, and their associated dangers. The provisions in this paragraph are designed to achieve this goal. Once entrants are provided with this information, they will then be able to make their own judgments as to the completeness of pre-entry preparations and point out any deficiencies that they believe exist. Employees will also be more likely to bring new hazards to the attention of the supervisor if they are discovered while working in the permit space if the employees are aware of which hazards have already been identified and which have not. Posting the permit for employees to see at the entry point can also be useful when multiple employers will be working in the same permit space.

Sharing this information with employee authorized representatives may help bring the representative's expertise to bear in identifying additional hazards not accounted for in the permit process. One commenter described a situation where he, as an authorized employee representative, was able to alert employees to additional atmospheric hazards that were generated by the adhesives used to join plastic pipe tubes in a room with inadequate ventilation (ID–010). Final paragraph (c) includes one variation from the language of the general industry standard. Under the general industry standard a single posting can be sufficient to inform multiple employees, but employers must still make sure that the permit is available to each entrant, or the entrant's representative, prior to entry into the permit space. For example, an employer does not fully comply with the standard by posting the permit after one of its employees has already entered the permit space. OSHA is including the same requirement in this final rule, but is also taking the opportunity to provide further clarification in this final rule that the information must be made available to ''each authorized entrant''; the general industry standard is less specific, referring to ''all authorized entrants.'' In appropriate cases, if an employer fails to make this information available as required, OSHA may issue separate citations with respect to each individual employee who enters a confined space without having access to this information.

Paragraph (d). Final § 1926.1205(d), which is identical to § 1910.146(e)(4), prohibits employers from making the entry permit's duration longer than the time needed to complete the related work. Otherwise, the conditions inside the space are more likely to change and entrants could be unnecessarily exposed to the residual hazards of permit spaces.

One commenter suggested that OSHA limit the duration of the permit's validity to one day or one shift to ensure that someone inspects the confined spaces that employees are entering to discover changed conditions (ID–060, p. 4). OSHA does not agree that such a fixed limit is warranted. This process would be more burdensome because it would require cancellation of entry permits even when there is no change in conditions or hazards. Final § 1926.1204(e)(2) requires an employer to monitor the conditions inside a confined space to determine if they become unacceptable. Furthermore, final § 1926.1205(e)(2) requires an employer to cancel the entry permit if an unacceptable condition arises. Taken together, these provisions provide a less burdensome, more flexible, and even more direct method of achieving the same safety mechanisms as the commenter's suggested approach. Moreover, the less limited requirements are consistent with the procedures required under the general industry confined spaces standard at § 1910.146. OSHA considered and rejected a similar request for a per-shift permit limit when promulgating the general industry final rule (see 58 FR 4505, 4506 (Jan. 14, 1993)).

Paragraph (e). Final § 1926.1205(e), which corresponds to § 1910.146(e)(5), requires an employer to terminate entry and cancel the entry permit under two conditions: when the employer completes the entry operations covered by the permit (final § 1926.1205(e)(1), which is identical to § 1910.146(e)(5)(i)), or when there is a condition inside or near the permit space that is not acceptable under the permit program established for that space (final § 1926.1205(e)(3), which is identical to § 1910.146(e)(5)(ii)). Requiring the entry supervisor to terminate the entry permit under either of these conditions increases the likelihood that the employees will exit the space before new hazards emerge, and that employees will avoid hazards arising from prohibited conditions within the PRCS. When an employer completes an entry without incident, the employer must cancel the permit by removing it from the entry site. If the employer cancels the permit in response to new hazards or changes in the condition of the permit space, the employer must record the reasons for the cancellation on the permit in accordance with § 1926.1205(f).

In response to comments, OSHA also is adding an additional provision in final § 1926.1205(e)(2) that is not in the general industry standard, but would provide employers additional flexibility in certain situations identified by the commenters. Some commenters asserted that it is unnecessary to require cancellation of the entry permit in every instance in which reevaluation is necessary, and that doing so was unnecessarily burdensome (ID–107, p. 4; –116, p. 3). A commenter representing a client involved in sewer construction suggested that, in the event an unacceptable condition arises that necessitates temporary evacuation and reevaluation, but does not present a new or increased hazard for employees working within the confined space, OSHA should allow employers to track these events on the existing permit rather than cancelling the entire permit and filling out a new permit. For example, if there is a temporary loss of power for five minutes such that the entrants must exit the permit space because the lighting conditions are inadequate, the employer would normally reenter once the power returns and the conditions inside the permit space are the same as they were for initial entry.

OSHA agrees that cancelling the permit may be unnecessary when a condition outside or inside the permit space requires an evacuation, but the permit space returns soon after to the same acceptable conditions specified under the permit. So long as the employer records on the permit the event that required evacuation, the employer conducts a full reassessment of the permit space that indicates restoration of the acceptable permit conditions before the employer permits reentry, there are no new gases or physical elements introduced into the space that are not addressed in the permit for that space, and there are no other significant changes to the space, OSHA believes that the employer can satisfy the purposes of the permit program without the additional burden of cancelling and replacing the entire permit. OSHA modified the text of the final rule accordingly by adding final § 1926.1205(e)(2) to allow for the ''suspension'' of the permit, as an alternative cancellation of the permit, when these criteria are met. During suspension, employers still must fulfill all applicable duties of an entry employer under the standard, such as preventing unauthorized entrance. An employer may temporarily suspend a permit in one of two ways: by removing it (leaving just the ''Do Not Enter'' sign or its equivalent that must be posted under § 1926.1203(b)(1) and remain there throughout the entry), or taking other steps, such as covering the permit, to ensure that no one will mistakenly rely on the permit to enter the space. Regardless of the method of suspension, the employer must also record the reason for the suspension on the permit (see § 1926.1205(f)).

It would still be necessary, however, to cancel the permit and complete a new one if there is any indication that the existing permit may not be adequate to ensure the safety of the entrants. Cancellation of the permit is also necessary if the employer is unable to identify the cause of the change in conditions that led to the evacuation, or if a new substance has entered the permit space or has increased in amount or concentration. For example, if there is gas in a permit space in a concentration held below safe levels by two ventilation fans located on the exterior of the permit space and operated in accordance with the employer's permit program, and one fan stops functioning, all employees would need to exit the space and the employer must suspend the permit until the space is returned to the allowable conditions specified in the permit program. If the employer is able to identify the source of the fan failure (*e.g.,* a burned-out motor), replace the fan, and return the gas in the space to a concentration below the applicable PEL, and nothing else has changed in the space, then the employer may permit its employees to re-enter after conducting a full reassessment of the space and noting the reason for the fan failure on the permit. Similarly, if the presence of a new gas is detected but the permit already anticipates that level of gas and includes a means of controlling that gas, the employer may control that gas in accordance with the existing permit instead of cancelling that permit and creating an entirely new permit. However, if the employer is unable to identify the reason for the fan failure, or that failure appears likely to occur again (*e.g.,* flickering power source), or there has been some additional change in the permit space (*e.g.,* monitoring detects the presence of a new gas not accounted for in the permit program, or condensation has formed within the space impeding entry or exit), then the employer must cancel the permit and develop a new permit that addresses those new conditions.

The final rule, similar to the general industry standard, requires employers to terminate the entry if there is an unacceptable condition ''in or near'' the permit space. Several commenters noted that the proposed rule included references to ''near'' in several different provisions and requested clarification. (See, *e.g.,* ID–061.1; –095; –101.1; –106.1; –120.1; –121.1; –124.1; –125.1; –131; –135; –136; –152; –220.) Many of these commenters, however, also urged OSHA to promulgate a construction standard that tracked the language of the general industry standard. OSHA, therefore, did not use ''near'' in this final rule except in § 1926.1205(e), which tracks the identical use of ''near'' in the general industry standard. The requests of numerous commenters urging OSHA to follow the general industry standard, and the absence of record evidence suggesting that employers have had difficulty complying with this general industry requirement, indicate that the use of this term in this context is sufficiently clear to employers engaged in permit-space work. The purpose of this provision remains the same in the construction context as in the general industry context: protection of employees working in confined spaces from exposure to additional hazards introduced into the permit space from outside. The use of ''near'' indicates a physical proximity to the permit space, but OSHA is not specifying a fixed distance because of the variety of potential hazards and the disparate distances from which the hazards could impact the confined space. For example, a small welding job may have no impact on a properly controlled permit space 15 feet away, but a demolition blast could easily result in a significant hazard for employees working in an underground permit space much farther away.

One commenter suggested that existing OSHA standards were already sufficient to protect employees from hazards near the confined space, while another commenter asked whether operating gasoline-powered equipment near the permit space would constitute a hazard, and whether an employer must cancel the entry permit for sewer work every time an automobile passed near the manhole to enter the sewer (see ID–131 and –098.1). The examples provided by the latter commenter demonstrate the need to address these external hazards in the confined spaces standard: activities not necessarily prohibited by any other standard and that usually do not pose a hazard to employees when used in open spaces, such as operating gasoline-powered equipment, can result in hazards when used in close proximity to a permit space. However, because operating gasoline-powered equipment or automobiles near a permit space is not inherently hazardous to the entrants working inside that space, the employer would not necessarily need to cancel the permit at each such occurrence. Instead, the employer must assess the hazards posed in each scenario. If the fumes from the gasoline-powered equipment are spewing into the confined space, then the employer likely would need to remove the entrants and reassess the acceptable conditions for work inside the space. Likewise, if the employer did not anticipate that automobiles would be driving near the entry to a permit space, and did not guard the entrance and establish barriers to adequately protect employees working in the permit space, then the employer would need to require the entrants to leave the space in a safe manner and then reassess the permit program if automobile traffic develops. If, however, the gasoline-powered equipment was operating at such a distance or in such a manner that it would not foreseeably result in a potential hazard to the permit-entrants, or if the employer planned for automobile traffic near the space and provided barriers and other appropriate protection, then the entry could

continue and the permit program would remain in effect. Activities outside the permit space will only require entrants to leave if they could foreseeably result in a hazard not accounted for when the employer developed the permit program.

Paragraph (f). Final § 1926.1205(f), which is almost identical to § 1910.146(e)(6), requires the entry employer to ensure that the cancelled entry permits are saved on file for at least a year after cancellation. In addition, § 1926.1205(f) requires employers to note any problems encountered during an entry operation, particularly those that trigger cancellation or suspension of a permit under § 1926.1205(e), on the pertinent permit.

This provision differs slightly from § 1910.146(e)(6) because it clarifies that ''every entry employer'' must comply with these duties, whereas § 1910.146(e)(6) refers generally to the duties of ''the employer.'' OSHA made this change in recognition that there may be many different employers on a construction worksite, and that each entry employer has a responsibility to ensure that the records are saved. In some cases, this may involve coordination between different employers.

The purpose of this document retention requirement, and of the requirement to note problems directly on the permit, is to facilitate the evaluation of the effectiveness of protection provided to employees involved in PRCS entries during the annual review required under § 1926.1204(n). The requirements of § 1926.1205(f) help to ensure that employees complete future PRCS entries in a similar way if the previous entries were successful, or that employers improve future PRCS entries by resolving any problems or concerns discovered.

One commenter asserted that the retention period should end upon completion of the project (ID–099, p. 4). OSHA disagrees with this commenter because the lack of document retention would significantly affect the employer's ability to complete its required annual review. OSHA set this minimum retention period at one year to ensure that the documents still would be available when employers conduct the required 12-month review specified by final § 1926.1204(n).

As the Agency noted in the proposed rule, these document-retention requirements are in addition to the document-retention requirements required by other OSHA standards, such as the 30-year retention period for employee-exposure records required by 29 CFR 1910.1020(d) (Preservation of records) [23] (see note to proposed § 1926.1219(b)). In some cases, entry permits may constitute employee-exposure records. (See definition of ''employee exposure record'' at 29 CFR 1910.1020(c)(5).)

One commenter suggested that OSHA incorporate the language in the general industry confined spaces directive, CPL 02–00–100: Application of the Permit-Required Confined Spaces (PRCS) Standard, 29 CFR 1910.146 (May 5, 1995), to provide additional explanation of what constitutes an ''employee exposure record.'' OSHA agrees that the term has the same meaning in this final rule as in the general industry standard, and that the guidance from CPL 02–00–100 is equally applicable: ''[R]esults which show the composition of an atmosphere to which an employee is actually exposed (even if the employee is using a respirator) are exposure records under 29 CFR 1910.1020(c)(5).''

This requirement to maintain exposure records gives healthcare providers, in the event of an emergency, access to information about the substances and exposure levels the employee may have experienced while working within a confined space. This information will enable healthcare providers to administer medical care effectively to injured employees.

Section 1926.1206—Entry Permit

An employer conducting a permit-space entry must post an entry permit outside the permit space to document the employer's efforts to identify and control conditions in that permit space (see § 1926.1205(c)). The purpose of the permit is to provide a concise summary of the permit-space entry requirements for a particular entry that will be useful to the personnel who are conducting the entry operations, to rescue personnel, to the controlling contractor, to other employers working near the confined space, and to any personnel who need to review the conduct of entry operations after the employer terminates the operations. Making the information on this document accessible to employers and employees affected by the hazards in and around the permit space also allows them to maintain an elevated awareness of the conditions within the permit space, as well as knowledge of the equipment and procedures necessary for safe permit-space entry operations.

[23] The note in 29 CFR 1926.33 makes the provisions of 29 CFR 1910.1020 (Access to employee exposure and medical records) applicable to construction operations.

The introductory language in final § 1926.1206 requires the employer to include, on the entry permit, all of the information specified in § 1926.1206(a) through (p). Most of the information required on the permit is substantively identical to the general industry confined spaces requirements at § 1910.146(f). The exception is paragraph (e), which requires the employer to record the means of detecting an increase in atmospheric hazard levels if a required ventilation system stops working. OSHA included that requirement in the proposed rule and, for the reasons explained below, OSHA concludes that it is important to retain it in the final rule.

Proposed § 1926.1210(k) provided that the employer must document, on the entry permit, all ''determinations made'' and ''actions taken'' during PRCS procedures, as required by proposed rule § 1926.1214(a). Commenters appeared to interpret this proposed provision as a broad and overly burdensome requirement, which was not OSHA's purpose (see, *e.g.,* ID–095, p. 4). In light of the concerns about the proposed language, the Agency notes that the final rule is not requiring employers to include on the entry permit each determination or action taken with respect to the permit entry. However, employers still must make certain demonstrations about hazards, ventilation, monitoring, or equipment, and document other determinations, as required by the final standard, and make that information available to employees (see, *e.g.,* § 1926.1203(e)(1), (g)(2), (g)(3)). Final § 1926.1206 is otherwise generally consistent with proposed § 1926.1214(a).

Paragraph (a). Final § 1926.1206(a), which is identical to § 1910.146(f)(1), requires the employer to identify the permit space that workers are planning to enter. This information will ensure that employees use the correct permit for the permit space.

Paragraph (b). Final § 1926.1206(b), which is identical to § 1910.146(f)(2), requires the employer to record the purpose of the entry. As the Agency noted in the proposed rule, this information must be sufficiently specific, such as identifying specific tasks or jobs employees are to perform within the space, to confirm that the employer considered performance of each specific construction activity in the hazard assessment of the PRCS. (See proposed § 1926.1214(a)(1)(ii).) An entry employer's failure to evaluate construction activities performed within the PRCS for their effect on the conditions within the space could result in serious injury or death to employees.

It would be sufficient, for example, to state the purpose of entry as ''replacement of communications cable in sewer line,'' or ''welding upgraded component inside steel tank,'' but it would not be sufficient to state only ''communications work in sewer line'' or ''upgrade to tank.''

Paragraph (c). Final § 1926.1206(c), which is identical to § 1910.146(f)(3), requires the employer to record the date and authorized duration of the planned entry. The ''date'' refers to the day on which authorized entrants are permitted to enter the PRCS. The duration of the permit may not exceed the time required to complete the specified tasks or jobs, including the time necessary to set up and dismantle any tools or equipment required to perform the tasks or jobs (see § 1926.1205(d)). The employer need not list duration in terms of time, but instead may describe it in terms of the completion of tasks identified in the permit. For instance, the employer could describe the duration as ''welding and repair of water main'' or ''upgrading equipment in an electrical vault.'' One purpose of this provision is to ensure that employees engaged in PRCS operations are informed of the period during which conditions in the PRCS must meet acceptable entry conditions as specified in the entry permit. A second purpose is to place some reasonable limit on the duration of the permit, because a permit of unlimited duration is not likely to account for changed PRCS conditions.

Paragraph (d). Final § 1926.1206(d), which is identical to § 1910.146(f)(4), requires the employer to record the identity of the authorized entrants so that the attendant is capable of safely overseeing the entry operations. Employers can meet this requirement by referring in the entry permit to a system such as a roster or tracking system used to keep track of who is currently in the PRCS. The availability of this information would enable the attendant, entry supervisor, or rescue service to quickly and accurately account for entrants who might still be in the PRCS when an emergency occurs. A second purpose is to provide assurance that all authorized entrants have exited the PRCS at the end of entry operations. A third purpose would be to assist the attendant and entry supervisor in preventing unauthorized personnel from entering the space.

It is extremely important for the employer to confirm that all authorized entrants have exited the PRCS during an evacuation. Therefore, a tracking system that lists the names of the employees who the employer designates as authorized entrants, but does not accurately account for the number of employees inside the PRCS at all times, would not meet the requirements of this paragraph. Merely maintaining a list of authorized entrants, who may or may not be at the job site or inside the PRCS, would not help the employer determine how many authorized entrants are left inside the PRCS should an evacuation be necessary. Likewise, a tracking system that only accounts for the number of authorized entrants inside the PRCS, without providing their names or other identifiers, also is not acceptable; knowing the name or other identifier of each entrant makes it easier for the rescuers to determine where the entrant is assigned to work in the PRCS, and thereby determine the entrant's probable location.

Paragraph (e). When a permit program requires ventilation, OSHA requires employers to ensure that they have a monitoring system in place that will alert employees of increased atmospheric hazards in the event the ventilation system fails (see § 1926.1204(c)(5)). Final § 1926.1206(e) requires the employer to record the means of detecting an increase in atmospheric-hazard levels if the ventilation system stops working. It is important for employers to provide this information on the entry permit so that any new employees can easily access this information and respond appropriately and as quickly as possible to ensure the continued safety of entrants. For example, if the original entry supervisor is replaced by a new entry supervisor halfway through entry operations, the new entry supervisor can refer to the entry permit for this information.

Paragraph (f). Final § 1926.1206(f), which is substantively the same as § 1910.146(f)(5), requires the employer to record the names of each attendant. Final § 1926.1206(f) differs from § 1910.146(f)(5) only in that it clarifies that the name of ''each person,'' rather than ''the person,'' must be recorded on the entry permit. There is often more than one attendant during the course of entry operations, so this requirement would facilitate identifying attendants quickly and easily, thereby expediting communications with them, which is necessary for the performance of safe PRCS entry operations, and for the performance of specified duties during emergency situations. When a new attendant replaces the previous one, the employer must make it clear on the permit which attendant is on duty, such as by crossing out the previous attendant's name, so that there is no confusion about the identity of the current attendant Without this requirement, the employer could waste valuable time finding the attendant responsible for protecting authorized entrants during an emergency.

Paragraph (g). Final § 1926.1206(g), which is nearly identical to § 1910.146(f)(6), requires the employer to record the name of each employee currently serving as entry supervisor. The same reasons for requiring the names of the attendants apply for requiring the name of the entry supervisor here: it provides an assured means of distinguishing these important individuals quickly and easily so that employees may alert them of a developing hazard, and it provides the opportunity for these individuals to review the permit and entry conditions to ensure that entry conditions remain safe. The general industry standard requires a space for each entry supervisor's name, which implies that the entry supervisor names will be filled in, but in this final rule OSHA is modifying paragraph (g) to make that requirement explicit: The employer must ensure that the name of each entry supervisor is entered into that space. As with the changes to the attendants, the employer must ensure that the current supervisor is identified as such when one supervisor replaces another.

Paragraph (h). Final § 1926.1206(h), which is identical to § 1910.146(f)(7) and corresponds to proposed § 1926.1214(a)(2)(i)(A), requires the employer to record the hazards associated with the planned confined space entry operations. This list must include all hazards, regardless of whether the employer protects the authorized entrants from the hazards by isolation, control, or personal protective equipment. Providing this list will make it clear which hazards the employer already identified so that the entrants can confirm that they received training to work around such hazards, and will know to bring any other developing hazard to the attention of the entrance supervisor immediately.

Paragraph (i). Final § 1926.1206(i), which is identical to § 1910.146(f)(8) and corresponds to proposed § 1926.1214(a)(2)(i)(B), requires the employer to record the procedures used to isolate or control the hazards prior to entry. This information must be consistent with the requirements specified in final § 1926.1204(c), and must include the methods used to isolate or control the hazards, the type of personal protective equipment provided, the methods used to monitor each hazard (including the use of early-warning systems, if required by final § 1926.1204(e), and how frequently each hazard is to be monitored). Note that

under final § 1926.1204(e), employers must use continuous monitoring of atmospheric hazards unless the employer demonstrates that periodic monitoring is sufficient. The permit need only refer to the procedures used to meet the requirements of this paragraph in sufficient detail to enable employees to determine what measures they must take, and how to perform those measures.

One commenter urged OSHA to require employers to identify the name(s) of the person(s) who performed all of the hazard-isolation or control procedures listed on the permit pursuant to § 1926.1206(i), such as the person(s) who operated a ventilation machine to control an atmosphere (ID–0625, p. 4). OSHA notes that employers must already include the names or initials of the person performing monitoring under final § 1926.1206(k). To the extent that the commenter intended to ensure the accuracy of the tests and measurements associated with the isolation or control procedures, OSHA notes that the entry supervisor must already verify the accuracy of this information (§ 1926.1210(b)). Therefore, OSHA concludes that, in the absence of additional evidence to indicate that these records would provide a discernible safety benefit, the additional records suggested by the commenter are not necessary.

Paragraph (j). Final § 1926.1206(j), which is identical to § 1910.146(f)(9), requires the employer to specify the acceptable entry conditions. The list of acceptable entry conditions includes energy control considerations and conditions such as the permissible levels allowed for oxygen, flammable gases and vapors, other hazardous substances during PRCS entry. Additional information regarding PRCS conditions includes, for example, the methods used to maintain a water hazard at safe levels. Another example included in the NPRM is when an employer decides to use PPE to protect employees from an atmospheric hazard, the acceptable conditions must include, at a minimum, the type of PPE the employees will use (such as type of respirator), and the levels at which the PPE would protect the employees from the atmospheric hazard. OSHA requires the employer to list the acceptable conditions on the permit so that the authorized entrants, attendants, and entry supervisors have this information on hand at the worksite, thereby ensuring safe entry operations.

This provision also requires employers, when applicable, to provide the ventilation-malfunction determinations made in paragraph (c)(5) of final § 1926.1204. As explained in the proposed rule, and above in the discussion of final § 1926.1204(c)(5), some permit spaces may require ventilation to control the atmospheric hazards at levels that are below the levels at which they are harmful to entrants so that entrants will have time to exit the PRCS safely (72 FR 67365). In these spaces, the employer will be responsible for identifying that level and monitoring the permit-space atmosphere to detect any increase of the potentially hazardous substance. The Agency's requirement that the employer include these determinations on the permit informs employees (for example, entry supervisors, attendants, and authorized entrants) about the time required for the entrants to evacuate the PRCS should the ventilation system fail, and allows authorized entrants, attendants, and entry supervisors to respond quickly to any deviations in these conditions, including ventilation-system failure.

OSHA notes, as it did in the explanation of this provision in the general industry standard, that there is likely to be overlap between this requirement to list the acceptable entry conditions and the separate requirement in § 1926.1206(i) to identify the hazard-control or elimination measures that the employer must also list on the permit (58 FR 4509 (Jan. 14, 1993)). The Agency anticipates that employers may elect to combine these two elements when filling out the permit, and such an approach is permissible so long as the employer includes all of the relevant information in some form that the authorized entrant, attendant, or entry supervisor can identify quickly.

Paragraph (k). Final § 1926.1206(k), which is nearly identical to § 1910.146(f)(10), requires the employer to record the dates, times, and results of the tests and monitoring performed, and the names or initials of the individuals who performed each test. Entering the testing and monitoring results in the permit enables the entry supervisor, attendants, and authorized entrants to determine readily whether acceptable entry conditions exist with regard to atmospheric hazards in the PRCS. The employer also could use this information to identify atmospheric conditions within the PRCS that need to be monitored frequently because atmospheric conditions tend to rise rapidly to hazardous levels. For example, if the oxygen concentration is 19.6 percent, the attendant and entrants should be alert for signs of oxygen deficiency, such as increased breathing rate, dizziness, rapid heartbeat, and headache. Furthermore, documentation of test results on the permit also facilitates the review of canceled permits required under paragraph (d)(14). If testing indicates that levels of hazardous substances are increasing, the increased hazard will be easy to recognize through a review of the recorded test results on the canceled permit.

Listing the names of those who performed the testing identifies a point of contact to which entry supervisors and attendants can direct questions they may have regarding the results and procedures. The date and time (or, for continuous monitoring, a time period) would provide a basis for detecting dangerous trends in atmospheric conditions that may indicate that more frequent observation of the atmospheric data is necessary.

The single difference between the final rule and § 1910.146(f)(10) is that the general industry provision requires documentation of ''initial and periodic testing,'' whereas final paragraph (k) of this final standard requires documentation of the results of all ''tests'' and ''monitoring.'' OSHA made these changes to address a significant difference between this final rule and § 1910.146: This final rule generally requires continuous monitoring, whereas § 1910.146 only requires periodic testing. For further explanation of this change, see the discussion to final § 1926.1204(e).

Consistent with data collection from continuous monitoring under § 1910.146, the continuous monitoring values recorded on the entry permit are ''real time'' concentrations. See December 10, 1996, letter to Michael Coleman, available at *www.osha.gov*. Although the final standard does not specify the frequency with which the employer must record continuous monitoring measurements, from a compliance perspective, the quantity of data entered on the permit must indicate the number of times the entry supervisor or other entrant examined the monitoring data. These measurements must be recorded with sufficient frequency to demonstrate that the permit space was monitored such that the employee could identify a change in atmosphere or other potential hazard in time to allow entrants to exit the permit space safely (See also discussion of § 1926.1203(e)(2) and 1926.1204(e)(2).) For continuous monitors with alarms, employers must record each time the alarm is triggered. Employers also must include the initial entry-monitoring results on the entry permit for the reasons explained above; these results also would serve as a baseline for subsequent measurements.

See December 10, 1996, letter to Michael Coleman, available at *www.osha.gov*.

Paragraph (l). Final § 1926.1206(l), which is identical to § 1910.146(f)(11), requires the employer to identify the rescue and emergency services required by this final rule, and the means by which these services will be summoned when needed. Identification of these services and the means for summoning them enables attendants to summon the appropriate service immediately in case of emergency. In some cases, an employer must include pertinent information, such as communication equipment and emergency telephone numbers, on the permit to sufficiently identify the means by which the rescue or emergency services will be summoned. The inclusion of this specific information would allow attendants to avoid errors and delays in contacting the rescue service.

Paragraph (m). Final § 1926.1206(m), which is identical to § 1910.146(f)(12), requires the employer to record all of the methods of communication used between authorized entrants and attendants during entry operations. OSHA notes that establishing a routine for maintaining contact between attendants and authorized entrants would help attendants detect problems within the PRCS. OSHA anticipates that the method of communication chosen may vary according to the circumstances of the particular workplace; however, the methods chosen must enable the attendants and the entrants to maintain effective and continuous contact. OSHA notes that, while such communication will normally be achieved through speech, other methods, such as tapping on a wall, may be acceptable as long as it achieves effective and continuous contact. See July 30, 1993, letter to Julie Emmerich, available at *www.osha.gov*.

Paragraph (n). Final § 1926.1206(n), which is identical to § 1910.146(f)(13), requires the employer to record the equipment it provides in accordance with the requirements of this final rule. This equipment would typically include, for example, personal protective equipment, testing equipment, communications equipment (including equipment needed to assess entrants' status in the space), alarm systems, rescue equipment, and other equipment that the employer would provide to ensure compliance with paragraph (d)(4) of final § 1926.1204 (personal protective equipment) or any other part of the standard. This requirement provides employees with a ready reference to the equipment required for safe entry operations.

Paragraph (o). Final § 1926.1206(o), which is substantively identical to § 1910.146(f)(14), requires the employer to record any additional information needed to ensure safe confined space entry operations. OSHA amended the language in § 1910.146(f)(14) slightly for clarity and conciseness. As OSHA explained in the preamble to the general industry standard, this provision is necessary for employee protection due to ''the wide-ranging types of hazards found in permit-required confined spaces, there are many hazards that cannot be adequately addressed with any precision in a generic permit space standard'' (58 FR 4510 (Jan. 14, 1993)). Examples of the information required by paragraph (o) may include: Problems encountered in the PRCS; problems that an attendant, entry supervisor, or authorized entrant believes may be relevant to the safety of the entrants working in the space; or any other information that may be relevant to employee safety under these conditions.

Paragraph (p). Final § 1926.1206(p), which is identical to § 1910.146(f)(15), requires the employer to record information about any other permits, such as for hot work, issued for work inside the confined space. If the employer identifies additional permits, these additional permits may be, but are not required to be, attached to the entry permit to provide information about the activity covered by the permit to employees involved in the entry operations so they can take appropriate precautions.

Section 1926.1207—Training

Final § 1926.1207 requires employers to train each employee who performs work regulated by this standard, and specifies the requirements of that training. The provisions in final § 1926.1207 are substantively similar to the provisions in the general industry confined spaces rule at § 1910.146(g). The substance of the training provisions in the proposed rule was similar to, but organized differently than, the training provisions in the general industry rule. The final rule includes a few provisions from the proposed rule to provide clarity and to ease documentation, as explained below, but follows the language and organization of the general industry standard. Proposed §§ 1926.1208, 1926.1213, 1926.1216, and 1926.1217 separated the training requirements based on the type of confined space involved. One commenter asserted that, in general, the training requirements were too scattered throughout the proposed rule (ID–099, p. 4). By organizing the training provisions according to the training provisions of the general industry confined spaces standard at § 1910.146(g), OSHA placed the training requirements together in one section.

Paragraph (a). Final § 1926.1207(a) sets forth the requirement, also found in § 1910.146(g)(1), that employers must train each employee who performs work regulated by this standard. OSHA modified this provision from § 1910.146(g)(1) to include some language from the proposed rule and to clarify two aspects of this requirement: (1) The employer must train each employee; and (2) the employer must provide training at no cost to the employee. Final § 1926.1207(a)(1) refers to ''each employee'' rather than ''all employees'' to emphasize that an employer's responsibility in this area flows separately to each employee. The provision of training at no cost is implicit in the general industry standard, and is consistent with OSHA's longstanding policy regarding employer responsibility for training. See, *e.g.,* 29 CFR 1926.1430(g)(3) (training under the Cranes & Derricks in Construction standard), § 1910.1001(j)(7)(iv) (asbestos awareness training for employees who perform housekeeping operation in an area that contains asbestos), and June 25, 1991, Memorandum to Regional Administrators, # 20315 (training under the HAZWOPER standard, 1910.120), available at *www.osha.gov*.

Paragraph (a) of the final rule also requires employers to provide training so that employees who perform work regulated by part 1926, subpart AA, acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under that section, including the safe operation of equipment and the proper use of PPE. Sections 1926.1208, 1926.1209, 1926.1210, and 1926.1211 of this final rule specify in detail the duties of authorized entrants, attendants, entry supervisors, and rescue service personnel. Paragraph (a) requires the training to impart the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under those sections. OSHA believes that the training employers provide employees under this provision will enable the employees to understand their duties under this standard, as well as the hazards posed by permit spaces, and to properly use equipment and PPE in a PRCS. Therefore, this training will enable employees to safely perform their requisite PRCS duties.

In this paragraph, the Agency is requiring the employer to provide whatever training is necessary to achieve the goal of safe performance of

an employee's duties. The performance language used in paragraph (a) will allow the employer to develop and implement the most effective confined space training program to meet the needs of the specific workplace. By requiring training of employees in § 1926.1207, and by specifying what those duties are in the relevant sections, the final rule sets forth requirements regarding whom employers train, as well as the content of the training.

This paragraph also incorporates a requirement found in proposed § 1926.1209(d)(1), which specifies that the training must result in an understanding of the hazards in the permit space(s), and the method(s) used to isolate, control, or in other ways protect employees from the hazards. For example, if an authorized entrant enters the space to isolate an identified hazard or to set up ventilation to control an atmospheric hazard, the employer must train the employee not only in accordance with the PRCS entry requirements, but also to perform the tasks necessary to isolate and control the specific hazards in accordance with other appropriate OSHA requirements applicable to construction. The employer also must train each employee who enters the space thereafter to understand how the employer isolated or controlled any hazards in the space. OSHA believes that the training employees receive under this provision will enable them to associate the signs, symptoms, and characteristic effects (discussed elsewhere in this preamble) to the failure of methods to control or isolate the hazards, and to alert them so that do not inadvertently disturb the isolation or control mechanisms. Therefore, this training will enable employees to safely perform their duties while working in the PRCS, and to respond appropriately if the hazard-protection methods fail.

Additionally, final § 1926.1207(a) includes the requirement, found in proposed § 1926.1209(d)(2), that, for employees not specifically authorized to perform entry rescue, their training must result in an understanding of the dangers of attempting entry rescue. This aspect of the training need not be extensive, as its purpose is to prevent exposure to permit-space hazards by simply keeping all employees who are not authorized to perform entry rescue out of such spaces. OSHA prohibits such entry precisely because it is likely to increase the risks of further injury to both the would-be rescuer and the employee requiring rescue. In final § 1926.1204(a) and (i), the Agency also requires entry employers to take action to prevent all unauthorized entry, but the training required by final paragraph (a) remains crucial to overcome the inclination of many employees to attempt to rescue a trapped colleague. If employees do not fully appreciate the dangers involved, their actions might also pose a danger to those employees designated to provide rescue.

Finally, some commenters asserted that the training requirements in this final rule should require employers to train entrants on the use of gas, propane, and diesel-powered equipment and chemical-cartridge respirators (ID–025, p. 3; ID–095, p. 3). Final § 1926.1207(a) requires employers to ensure that employees acquire the knowledge and skill to safely perform their duties, which includes training employees on how to use all equipment used in the PRCS.

Paragraph (b). Final § 1926.1207(b), which is substantively similar to § 1910.146(g)(2), requires the employer to provide training to each employee covered by this standard, as specified by paragraphs (b)(1)–(b)(5). One commenter requested that OSHA clarify that the employer must provide this training in a language understood by the employee (ID–140, p. 5). OSHA designed the training requirements in final § 1926.1207 to ensure that employees performing work regulated by this final rule understand the hazards so that they can take necessary precautions to perform their work safely. Therefore, the employer must provide this training in a language the employee understands, and ensure that the employee comprehends the training, to achieve the purpose of the training requirements. Final § 1926.1207(b)(1) incorporates the requirement that training be in both a language and vocabulary that the employee understands, which is consistent with OSHA's policy for all OSHA training requirements. See April 28, 2010, OSHA Training Standards Policy Statement, available at *www.osha.gov*. OSHA views this policy as applicable to all training requirements in all OSHA standards, but is adding the language in this standard for clarity.

Final § 1926.1207(b)(2)–(b)(4) require that the employer provide training before assigning the employee duties covered by this final standard, when there is any change in duties, and whenever there is a change in permit conditions that present a hazard for which the employee did not previously receive training. These requirements are substantively identical to § 1910.146(g)(2)(i)–(g)(2)(iii). OSHA believes the requirements in final § 1926.1207(b)(2)–(b)(3) are necessary to ensure that employers provide the training required by final § 1926.1207(a) at the appropriate times, that is, prior to exposure to confined space hazards.

Final § 1926.1207(b)(2), which is identical to § 1910.146(g)(2)(i), requires employers to initially train their employees before assigning them to perform duties under this standard. Accordingly, the employer must ensure that specified employees (that is, entry supervisors, attendants, authorized entrants, and rescue-service employees) receive the training required by final § 1926.1207(a) prior to performing assigned PRCS duties. This requirement ensures that employers train these specified employees regarding PRCS hazards before the employer exposes authorized entrants to these hazards.

Final § 1926.1207(b)(3) and (b)(4) are substantively identical to the general industry standard at § 1910.146(g)(2)(ii) and (g)(2)(iii). They address the issue of refresher training. Final paragraph (b)(3) requires training before there is a change in assigned duties. Such changes could be the result of new equipment or techniques introduced into the entry operations, promotions, or simple reassignments. If an employee previously received training in the new duties and the employer ensures that the employee is still familiar with the previous training, then the employer need not conduct additional training under this paragraph, provided the employer has no evidence that there are inadequacies in the employee's knowledge or use of the relevant permit-space procedures. If there is evidence that such inadequacies exist, the employer must retrain the employee under final paragraph (b)(5).

Paragraph (b)(4) similarly requires retraining if there is a change in permit-space entry operations that presents a hazard for which an employee did not previously receive training. This paragraph changes the phrase ''permit space operations,'' from the general industry standard at § 1910.146(g)(2)(iii), to ''permit space *entry* operations'' for the reasons explained in the introduction to the discussion of final § 1926.1204. One commenter was unsure whether minor revisions of procedures, such as an increase in the use of mechanical ventilation, would trigger the training requirements of final § 1926.1207(b)(3) (ID–099, p. 3). The relative significance of the change in procedures does not determine the need for additional training; employers must ensure that employees can perform their duties safely, so any change in PRCS entry procedures for which an employee did not receive previous training would necessitate training under this final rule

to the extent it requires new knowledge or skill by the employee.

Final § 1926.1207(b)(5) provides that an employer must retrain an employee whenever the employer has any evidence that the employee has deviated from PRCS entry procedures or inadequacies in the employee's knowledge or use of these procedures. This provision is substantively identical to the general industry standard at § 1910.146(g)(2)(iv), but this final provision clarifies that retraining must occur when there is evidence of deviation, a change from the phrase ''reason to believe'' in the general industry standard. OSHA believes the term ''evidence'' will be clearer than the general industry language for both employers and OSHA inspectors. By making this revision, OSHA does not intend to make a substantive difference in the types of employee actions or other factors that would trigger the retraining requirement. Evidence of a need for retraining may come from a variety of sources, such as an employee's actions during, or prior to, an entry, statements made that indicate a lack of understanding of permit-space entry procedures, reports of other employees or third parties, or from other incidents.

One commenter asserted that requiring retraining after every deviation is overly burdensome. (ID–120, p. 3.) This commenter suggested that OSHA require the employer to establish a better line of communication and coordination when the deviation is not too severe. However, the commenter did not suggest a means of identifying the severity of a deviation. In light of the hazards associated with confined spaces, and the procedures implemented to address those hazards, the failure of even one employee to follow the correct procedure can adversely affect the safety of others. OSHA, therefore, concludes that it is necessary to retrain any employee who deviates from the approved entry procedures. This retraining must provide the employee with the knowledge and skills necessary for safe performance of his or her confined space duties in accordance with final § 1926.1207(a), although the employer may restrict retraining to the limited aspect of the employee's overall responsibility on which the employee made the deviation. For example, if employee failed to use a piece of equipment properly, the retraining could focus on the proper use of that equipment, and need not focus on areas unrelated to the deviation, such as the hazards associated with the atmosphere in the space.

Paragraph (c). Final § 1926.1207(c), which is identical to the general industry standard at § 1910.146(g)(3), requires an employer to establish that the employee is capable of performing his or her confined space duties proficiently, and to provide any supplemental training needed to make the employee proficient. This provision ensures that employees will not enter a PRCS without being able to apply the knowledge and procedures addressed in their training. In other words, the employer must determine that, for each employee, the training is effective and resulted in the employee being capable of performing the required duties proficiently.

Some commenters were unsure how an employer can demonstrate that an employee is proficient under final § 1926.1207(c) (ID–106, p. 2; –120, p. 3; –152, p. 3). Final § 1926.1207(c) is a performance-oriented measure that provides employers with flexibility by not requiring a particular way to demonstrate proficiency. Administration of a test or practical examination are some examples of how an employer may demonstrate an employee's proficiency.

Paragraph (d). Final § 1926.1207(d), which is substantively similar to the general industry standard at § 1910.146(g)(4), requires an employer to ''maintain training records,'' as opposed to the requirement in § 1910.146(g)(4) that employers ''certify'' training. This final paragraph also requires employers to document the names of employees trained, the trainer's name, and the dates of the training performed, and to make these records available for inspection by employees and their authorized representatives. Final § 1926.1207(d) differs from the general industry standard in that it provides more flexibility in the documentation of training, and it requires the retention of this documentation.

The training-documentation provision in final paragraph (d) requires only the name of the trainer, not the trainer's signature or initials as required in the general industry standard. Proposed § 1926.1209(d)(5) contained these more flexible requirements, and OSHA retained them in the final rule. This documentation can take any form that reasonably demonstrates the employee's completion of the training. Examples include a record of test scores, a photocopied card certifying completion of a class, or any other reasonable means. The employer may store these records electronically so long as they are readily accessible upon request. OSHA recognizes that the turnover rate for employees on construction sites is higher than in many other industries, and that employees also are likely to work at several different worksites based on the type of work required. For example, an employer could designate an employee to be an authorized entrant in several different confined spaces at the same worksite, which may require the employee to perform different assigned tasks under various planned conditions. In this situation, the documentation must be readily accessible to determine whether the employee received the training necessary to perform the various tasks under the planned conditions. Compliance with this provision will help ensure safe conditions within the PRCS by providing employers, and OSHA, with an administrative tool that they can use to confirm which employees will be able to perform the duties required by this standard. Section 1926.1207(d) requires, as the general industry standard does, that these training records must be available for inspection by employees and their authorized representatives. Permit-space employees rely on their fellow employees for safe entry operations, and this provision provides that the training records that document employees' training status be available to those employees and their representatives. This requirement can be especially important in the construction industry due to the high level of employee turnover and multiple employers present at construction sites, including different employers who conduct simultaneous entry where one employer's lack of training for its employees could jeopardize the fully trained employees of a different employer. Consequently, making these records available for inspection by employees and their representatives provides an additional level review to ensure that the employees received the proper training and are ready to engage in safe entry operations.

One commenter was unsure whether the final standard would require an employer to maintain the name of the person that provides general confined space training as well as ''for the specifics of this PCRS.'' (ID–098, p. 2). OSHA is uncertain of what training the commenter is referring to. To the extent that the commenter was referring to training required by this final rule, final § 1926.1207(d) requires the employer to record the name of the person who conducted the training. To the extent the commenter was referring to training required by a different rule, the

comment is not applicable to this rulemaking.

As in this final rule, proposed § 1926.1219(c) required that employers retain these training records for the time the employee remains employed by them. The general industry confined spaces standard at § 1910.146(g)(4) does not specify how long an employer must retain the documentation. These training records are a valuable resource for tracking whether an employee received the necessary training. If these records are to serve as a tool to confirm employee training, the records must be available during the period the employee is working for the employer. Once the employee ceases to work for the employer, there is no longer a significant benefit in tracking this information. Therefore, OSHA is keeping in the final rule the proposed requirement that an employer must retain training documentation until the employee ceases to work for the employer.

One commenter had several concerns about the retention of training records. First, the commenter asserted that this retention requirement is an unnecessary burden on employers (ID–099, p. 4). OSHA's experience under the documentation requirements of other standards indicates that employers typically use existing training records to meet these documentation requirements and, as explained above, final § 1926.1207(d) allows significant flexibility in the form of the records and how an employer must store them. Next, the commenter was unsure whether final § 1926.1207(d) requires an employer to maintain training records when the employer lays off an employee and then rehires him or her (*id*). In the event an employee ceases to work for the employer, final § 1926.1207(d) does not necessarily require the employer to continue to maintain or store the training records; however, there is an incentive for the employer to retain these records if there is a possibility that the employer might re-hire the employee, as in the example offered by the commenter. The standard does require the employer to maintain a set of training records for all employees performing confined space work, regardless of when the employer hired the employee, so if the employee is rehired the employer would be required to produce that employee's training records or retrain the employee. This commenter also asserted that employers should be free to establish their own policy for retaining training records (*id*). Final § 1926.1207(d) leaves the employer with discretion in developing its training-documents retention policy, and requires retention only until the employee ceases to work for the employer.

Another commenter asserted that final § 1926.1207(d) should require employers to keep these training records on site (ID–031, p. 1). OSHA finds that such a requirement would be an unnecessary burden on employers. The purpose of the final requirement is to ensure that employers can document their employees' training in case an issue arises with respect to the training (*e.g.,* whether the employee received training, whether the training was adequate). Though the training records need to be readily available, it is not necessary for the employer to have immediate access to these records at the site. Requiring the employer to maintain the records and make them readily accessible for inspection, even offsite and/or in electronic form, is sufficient to accomplish the purpose of the provision.

Section 1926.1208—Duties of Authorized Entrants

An authorized entrant is an employee authorized by an entry supervisor to enter a permit space. As the Agency noted in the preamble to the general industry standard, ''[T]his is the person who faces the greatest risk of death or injury from exposure to the hazards contained within the space'' (58 FR 4515 (Jan. 14, 1993)). Because of the dangers associated with confined space work, employers must prepare the entrants properly to perform duties so as to assure their own safety and the safety of their fellow entrants. The employer accomplishes this purpose by means of training, communication of effective work rules, and internal administration.

Final § 1926.1208 is nearly identical to the general industry requirements in § 1910.146(h), except for minor editorial revisions and a revision in the introductory text to improve clarity. The introductory language in § 1910.146(h), which sets out requirements for authorized entrants, refers generally to the duties of ''the employer.'' OSHA changed the introductory language to refer to ''the entry employer'' to clarify how this rule applies on multi-employer worksites. This is a non-substantive change, however, because the provisions in § 1926.1208 apply to each employer establishing the permit program for a permit space or allowing its employees to enter under another employer's program.

The authorized entrant duties also are substantively the same as the duties specified by proposed § 1926.1211(g), except as noted in the discussion below. The Agency did not receive any comments specifically addressing that provision of the proposed rule.

Paragraph (a). Final § 1926.1208(a), which is substantively identical to the general industry standard at § 1910.146(h)(1), requires an employer to ensure that an authorized entrant is familiar with and understands the potential hazards associated with each particular confined space entry, including the mode, signs or symptoms, and the consequences of exposure to these hazards. The final rule uses ''familiar with and understands,'' rather than the ''knows'' used in the general industry standard, to emphasize the employee comprehension required by the rule. This knowledge and understanding affords authorized entrants with the information they need to protect themselves from these hazards, including recognition of the effects of these hazards should exposure occur.

Paragraph (b). Final § 1926.1208(b), which is substantively identical to the general industry standard at § 1910.146(h)(2), requires an employer to ensure that an authorized entrant uses required equipment properly. OSHA believes that proper use of such equipment is essential for working safely inside a PRCS and preventing any rescue operation from harming the incapacitated authorized entrant. Many employers can meet this requirement through implementation of safe work practices, training, and effective enforcement of those practices.

Paragraph (c). Final § 1926.1208(c), which is substantively identical to the general industry standard at § 1910.146(h)(3), requires an employer to ensure that an authorized entrant communicates effectively with the attendant to facilitate the attendant's adequate assessment of the entrant's status and timely evacuation (see also the discussion attendant-entrant communications in the explanation of § 1926.1206(m)). The authorized entrant's communication with the attendant provides the attendant with information regarding any problems the entrant is having, which the attendant can use to determine whether there is a need to evacuate the PRCS.

Paragraph (d). Final § 1926.1208(d), which is similar to the general industry standard at § 1910.146(h)(4), requires an employer to ensure that an authorized entrant alerts the attendant whenever one of the following circumstances arises: (1) There is a warning sign or symptom of exposure to a dangerous situation; or (2) the entrant recognizes a prohibited condition. In some instances, a properly trained authorized entrant may be able to recognize and report his

or her own symptoms, such as headache, dizziness, or slurred speech, and take the required action. In other cases, the authorized entrant, once the effects begin, may be unable to recognize or report them. In these latter cases, this provision requires that other, unimpaired, authorized entrants in the PRCS, who employers must properly train to recognize signs, symptoms, and other hazard-exposure effects in other authorized entrants, report these effects to the attendant. Reporting these effects will ensure the safety of the authorized entrants by removing them from the hazardous conditions in a timely manner.

Paragraph (d)(1) differs slightly from the corresponding general industry provision at § 1910.146(h)(4)(i). The general industry provision requires an employer to ensure that an authorized entrant alerts the attendant when ''the entrant recognizes'' a dangerous situation. Final § 1926.1208(d)(1) requires an employer to ensure that an authorized entrant alerts the attendant whenever ''there is . . . a dangerous situation.'' OSHA made this change to make the requirement objective, and not contingent on the subjective belief of an authorized entrant about the level of danger. For example, if an entrant knocks over a container of sealant that was not scheduled to be opened until later, thereby releasing hazardous fumes into an inadequately ventilated permit space, the final rule makes it clear that the entrant has a duty to report the incident to the attendant immediately. The employer must ensure that the entrant is adequately prepared to identify such an incident as a dangerous situation, and the entrant's failure to do so would not excuse the entrant or employer from that duty.

By using language closer to that in the general industry, OSHA has deviated slightly from the equivalent requirement in the proposed rule, § 1926.1211(g)(3), which required the authorized entrant to alert the attendant of ''any sign, symptom, unusual behavior, or other effect of a hazard.'' OSHA retained the reference to a ''symptom'' from the proposed rule, but believes that the reference to the ''dangerous situation'' in the general industry standard provides slightly broader coverage than the proposed language. Under the general industry standard and this final rule, attendants would need to be aware, for example, of an entrant experiencing a heart attack or other condition unrelated to the conditions in the confined space, but which might nevertheless affect that entrant and/or other entrants in the space. However, the general industry language incorporated into the final rule provides sufficient specificity regarding the conditions covered by the provision, and employers and authorized entrants are familiar with the language, having used it for years in general industry work (and in construction work if they chose to voluntarily follow the general industry requirements). Other examples of exposure to a dangerous situation that an authorized entrant must report to the attendant under paragraph (d)(1) or (d)(2) include: Low measurements of supplied air in a closed-respirator system; fraying or snagging of a retrieval line; a leak allowing an unidentified substance to enter the confined space through the walls of the space or from a container brought into the space; sparks or other evidence of potential electrical malfunction (particularly in areas where flammable gases are present); and any changes identified by the entrant in his or her physical condition or the physical condition of another entrant (*e.g.,* dizziness, chest pains, vertigo, breathing difficulty, trembling, etc.).

Paragraph (e). The introductory language in final § 1926.1208(e), which is identical to the general industry standard at § 1910.146(h)(5), requires an employer to ensure that an authorized entrant exits from the confined space whenever one of circumstances identified in final § 1926.1208(e)(1)-(e)(4) arises.

Final § 1926.1208(e)(1), which is similar to the general industry standard at § 1910.146(h)(5)(i), requires an employer to ensure that an authorized entrant exits from the confined space whenever the attendant or entry supervisor orders an evacuation. It is essential that the authorized entrants quickly comply with the command to evacuate, particularly because the attendant or entry supervisor may be aware of a hazard that the authorized entrant has not detected. Even when there is disagreement between the entry supervisor and attendant as to whether to evacuate, this provision requires the employer to enforce orders to evacuate given by either the entry supervisor or the attendant. OSHA believes this provision is necessary because emergencies within a confined space are time sensitive, and the entry supervisor and attendant may have different information regarding the types or severity of the hazards in the PRCS.

Final § 1926.1208(e)(2), which is similar to the general industry standard at § 1910.146(h)(5)(ii), requires an employer to ensure that an authorized entrant exits from the confined space whenever there is a warning sign or symptom of a dangerous situation. The phrase ''warning sign or symptom of a dangerous situation'' has the same meaning as in final paragraph (d) of this section. As with final paragraph (d), and for the same reason, final paragraph (e)(2) differs slightly from the corresponding general industry provision at § 1910.146(h)(5)(ii) because final § 1926.1208(e)(2) requires an employer to ensure that an authorized entrant exits the space whenever ''there is . . . a dangerous situation,'' rather than whenever ''the entrant recognizes'' a dangerous situation. This provision requires authorized entrants to exit the PRCS as quickly as possible in such cases because the safety procedures delineated in the permit are designed to work in the context of clearly defined acceptable entry conditions, and deviations from the planned measures therefore require timely evacuation to ensure the health and safety of the entrants pending evaluation of the dangerous situation.

Final § 1926.1208(e)(3), which is identical to the general industry standard at § 1910.146(h)(5)(iii), requires an employer to ensure that an authorized entrant exits from the confined space whenever the entrant detects a prohibited condition, as defined in final § 1926.1201. This requirement ensures that employees exit the confined space if there is any prohibited condition, such as a hazardous atmosphere or uncontrolled physical hazard, in the space. Exiting the space upon detecting a prohibited condition will prevent serious injury or death to the entrants. Other examples of prohibited conditions include, but are not limited to, the emergence of a new hazard, a hazard level that exceeds acceptable entry conditions, or personal protective equipment that is not working as planned. In such circumstances, authorized entrants must exit the space to protect their health and safety.

Final § 1926.1208(e)(4), which is identical to the general industry standard at § 1910.146(h)(5)(iv), requires an employer to ensure that an authorized entrant exits the confined space whenever an evacuation alarm sounds. Examples of these alarms include, but are not limited to, atmospheric or engulfment-hazard monitor alarms or alarms activated by an authorized entrant or other employee. This provision ensures that entrants in a PRCS exit the space in a timely manner upon activation of an evacuation alarm warning them of an impending danger, thereby preventing serious injury or death to the entrants.

Section 1926.1209—Duties of Attendants

In final § 1926.1209, OSHA sets out the duties of the attendant required by final § 1926.1204(f) as part of every permit program. The general industry standard recognizes the need for an attendant outside permit spaces, and the preambles for final § 1926.1204(f) and the general industry standard at 58 FR 4517 (Jan. 14, 1993), explain the need for these attendants. One of the major problems in permit space entry operations is that, if an entrant within the space is injured or incapacitated in the space, he or she cannot normally be seen from outside the space, so the attendant is critical to recognizing quickly any injury or incapacitation so that the employer can initiate the applicable rescue operation as soon as possible. The attendant also plays a critical role in protecting employees inside the confined space from unauthorized entries and potentially hazardous conditions outside the confined space that could affect the workers inside the confined space.

The provisions in final § 1926.1209 are substantively identical to the provisions in the general industry confined spaces rule, except as noted below. The introductory language to § 1910.146(i) refers to ''the'' employer. As in the introductory language for many of the provisions in the final rule, OSHA refers to ''the entry employer'' in the introductory language of § 1926.1209 to clarify how this rule applies on multi-employer worksites.

The attendant duties are also similar to the duties specified in proposed §§ 1926.1210(f) and 1926.1211(f). The final rule does not include a paragraph found in proposed § 1926.1211(f)(9), which expressly prohibited attendants from entering a confined space to perform rescue. OSHA did not include this paragraph because the prohibition is clear from the general industry standard language incorporated into the final rule, *i.e.,* employers must ensure that attendants never enter a confined space, whether it is to perform rescue or for any other purpose, unless another person assumes the duties of the attendant, and the attendant is properly trained for rescue activity. See § 1926.1209(d) and its Note. In this way, the final rule provides more flexibility to employers than the proposal.

Paragraph (a). Final § 1926.1209(a), which is almost identical to the general industry standard at § 1910.146(i)(1) (except for non-substantive clarifications), requires an employer to ensure that each attendant is familiar with hazards that he or she may encounter during entry, as well as the signs and consequences of such exposures. Section 1910.146(i)(1) requires an employer to ensure that each attendant ''knows'' the hazards that he or she may encounter during entry. OSHA replaced ''knows'' with ''is familiar with and understands'' in the final rule to emphasize that the element of comprehension is critical to the attendant's ability to fulfill his or her duties. Attendants must be able to recognize when entry conditions in the PRCS are unacceptable—that the system of employee protection is malfunctioning. Because attendants would be able to easily communicate with entrants and entry supervisors, their recognition of deviations from acceptable entry conditions, and of the signs, symptoms, and characteristic effects that indicate exposure to a hazard, will enable a timely evacuation from the PRCS. For additional information concerning the signs and symptoms of exposure, see the discussion of § 1926.1208(d) in this preamble.

Paragraph (b). Final § 1926.1209(b), which is identical to the general industry standard at § 1910.146(i)(2), requires the attendant to be aware of the potential behavioral effects of hazard exposure to authorized entrants. While there is overlap between this requirement and the requirement to be familiar with and understand signs and symptoms of exposure, the same overlap exists in the general industry standard and OSHA is preserving the separate requirements for consistency with the general industry standard and to emphasize the importance of recognizing behavioral changes as possible evidence of hazard exposure. OSHA believes this requirement is necessary because the attendant is likely to be in a position to quickly recognize deteriorating conditions within the space and readily communicate the need for an immediate evacuation. For instance, subtle behavioral changes or effects detected in an entrant's speech, or deviations in established communication procedures, would alert the attendant that it is necessary to initiate the procedure to evacuate or rescue the entrant from the space.

Paragraph (c). Final § 1926.1209(c), which is identical to the general industry standard at § 1910.146(i)(3), requires the attendant to maintain an accurate count at all times of authorized entrants, and to ensure that the method used to identify entrants under final § 1926.1206 of this section is accurate. In emergency situations requiring evacuation, the count and identification of entrants is necessary to determine whether evacuation of all authorized entrants from the space occurred, and that no unauthorized entrants remain in the space. This information can then be relayed, if necessary, to rescue workers.

Paragraph (d). Final § 1926.1209(d), which is identical to the general industry standard at § 1910.146(i)(4), requires the attendant to stay outside of the permit space during entry operations until he or she is relieved by another attendant. One of the main duties of the attendant is to recognize hazardous conditions that are occurring inside the PRCS, and to communicate this information to rescue personnel in emergency situations. The attendant is also often the first (and sometimes only) person to recognize prohibited conditions or signs of hazardous conditions within the space. If the attendant was inside the space, the attendant could become incapacitated if an emergency occurred, or the entrants are exposed to prohibited conditions, and consequently rendered unable to perform the duties that are necessary to protect the other employees.

OSHA included a note to final § 1926.1209(d) that is substantively the same as the note in the general industry standard. OSHA reorganized the sentence structure of the note in the final rule to clarify that the attendant cannot attempt rescue until properly relieved, and then only if the attendant is permitted to do so under the permit program and adequately trained and equipped for entry rescue. However, the final rule permits the attendant to perform non-entry rescue so long as the attendant receives proper training to do so. If the attendant is performing his or her duties in multiple spaces, the attendant also must order the entrants in those other spaces to exit the spaces while the attendant is involved in the rescue, or ensure that another person assumes the attendant duties for the other spaces.

Paragraph (e). Final § 1926.1209(e), which is nearly identical to the general industry standard at § 1910.146(i)(5), requires the attendant to communicate with authorized entrants as necessary to keep track of the entrants' status and to notify entrants if evacuation under final § 1926.1209(f) of this section is necessary. OSHA believes that this communication provides information that the attendant needs to determine if the entry can continue. For example, subtle behavioral changes detected in the entrant's speech, or deviations from set communication procedures, could alert the attendant that it is necessary to evacuate or rescue the entrant. This requirement may assist the attendant in fulfilling the duties to identify signs and

symptoms of exposure or behavioral changes (see paragraphs (a) and (b) of this section). In addition, if the need arises, the attendant must communicate to the entrants an order to evacuate because the entrants may not know that there is an emergency.

In the final rule, OSHA requires the attendant to stay in communication to ''assess'' the entrant's status, rather than to ''monitor'' it as required in the general industry standard. While there is no substantive difference between these terms, OSHA uses ''assess'' because ''monitor,'' as defined in the final standard, refers to the identification and evaluation of hazards in a confined space. Assessment connotes an interactive duty in which the attendant may ask questions of the entrant, or ask the entrant to perform a task so the attendant can evaluate the entrant's status.

As with the general industry standard, the attendant's ''communication'' with the entrant may take different forms depending on the limitations of the particular permit space. In most instances, the attendant could use voice communication, including communication by phone, walkie talkie, or other device that provides a clear and continuous means of communication with the entrant. In other cases, alternative methods, such as tapping on the walls of the space to allow for assessment through a pre-arranged code, may be sufficient to satisfy § 1926.1209(e). See, *e.g.,* July 30, 1993, letter to Julie Emmerich.

Paragraph (f). Final § 1926.1209(f), which is almost identical to the general industry standard at § 1910.146(i)(6), requires the attendant to assess the activities and conditions inside and outside the space to determine if it is safe for entrants to stay in the space. OSHA again uses ''assess'' instead of ''monitor'' for the same reason discussed above in final § 1926.1209(e). OSHA refers to ''activities and conditions'' in the final rule, as opposed to just ''activities'' in the general industry standard, for internal consistency within this provision. In the same paragraph, OSHA requires the attendant to evacuate the permit space under any of the four ''conditions'' listed in final § 1926.1209(f)(1) through (f)(4): (1) The attendant notices a prohibited condition, (2) the attendant identifies the behavioral effects of hazard exposure in an authorized entrant, (3) there is a condition outside the space that could endanger the authorized entrants, or (4) the attendant cannot effectively and safely perform the duties required under final § 1926.1209. Thus, it is necessary for the attendant to assess both the activities and conditions affecting the entrants.

In the general industry standard, OSHA requires the attendant to order evacuation ''if the attendant detects'' a prohibited condition, certain behavioral effects, or a condition outside the space that could endanger the entrants. See § 1910.146(i)(6)(i) through (i)(6)(iii). OSHA did not include the quoted language in the final rule because existing conditions, not detection by the attendant, trigger the duties in final § 1926.1209(f)(1) through (3). OSHA believes that each of these conditions represents potential precursors to serious safety hazards that threaten the health and well-being of employees working in and near the PRCS, and the employer has a duty to ensure that the attendant detects them.

One of the conditions that triggers evacuation is a situation that arises outside the permit space that could endanger the workers inside the space. See final § 1926.1209(f)(3). This requirement also is specified in the general industry standard. Under final § 1926.1203(h)(4) and § 1926.1204(k), the employer must develop and implement procedures to coordinate entry operations with other employers working outside the confined space when the activities of those employers could, either alone or in conjunction with the activities within a permit space, foreseeably result in a hazard within the confined space. In most cases, employers will perform such activities outside the space in close proximity to the permit space, and the attendant must be aware of the applicable coordination procedures to identify any deviation and evacuate the entrants if the deviation makes it unsafe for the entrants to remain in the permit space. While not required to do so, the attendant may take steps to stop activities that do not conform to those procedures, either directly or by notifying the entry supervisor and the controlling contractor, provided that doing so does not interfere with the attendant's ability to fulfill the duties required by § 1926.1209. However, if the employer does not address the potentially endangering activities immediately, the attendant must evacuate the entrants. Consider, for example, a situation in which employees are working inside a storm-sewer permit space that is not isolated from the general storm sewer system. If someone within the view of the attendant is setting up for an activity that will discharge water into the upstream portion of the storm sewer system, the attendant must alert the entry supervisor, and may call to the person setting up the discharge system to request that the person not discharge water into the storm sewer until the employees in the storm sewer have completed their work. If the potential pumpers refuse to wait, then the attendant must order the immediate evacuation of the permit space. See § 1926.1209(f)(3).

Other examples of conditions or activities outside a permit space that would require the attendant's attention include the placement of potentially hazardous items near a ventilation intake source (*e.g.,* an open container of epoxy or gasoline-powered equipment emitting exhaust), or physical conditions that could affect the permit space (*e.g.,* heavy rains outside a below-ground permit space).

One commenter asserted that requiring an attendant to evaluate confined space hazards inside and outside a ground storage tank exposes the attendant to both fall hazards and struck-by hazards (ID–210, Tr. p. 223). For example, a situation in which the tank does not have a ground level entrance, and the attendant must climb a vertical fixed ladder to gain access, exposes the attendant to a fall hazard. However, this comment fails to recognize that the standard would permit the attendant to use electronic monitoring and communications or other means to fulfill the duties in § 1926.1209. Thus, depending on the circumstances of the space, the attendant might only need to physically approach the entrance of the permit space to perform non-entry rescue if non-entry rescue is appropriate (the retrieval equipment would not increase the overall risk of entry and would contribute to the rescue of the entrant), and then only when assigned and trained to do so. In addition, if the attendant encounters a hazard not covered by the confined spaces standard (*e.g.,* a fall hazard), the employer must comply with the relevant OSHA requirements that address the hazard (*e.g.,* 29 CFR part 1926, subpart M, for fall hazards).

More importantly, it appears that the commenter also is challenging the general need for an attendant by asserting that an attendant is unnecessary when the employer is performing work inside an above-ground storage tank (ID–210, Tr. p. 223). In these situations, so long as the space meets the definition of a permit-required confined space, an attendant is necessary for safe entry operations. Although the person designated by the employer as attendant is not assigned the overall responsibility for employee safety and health assigned to the entry

supervisor, the attendant is a crucial link in the communication chain between the entry supervisor, rescue operations, and the authorized entrants. For additional explanation of the importance of the attendant's role, see the introductory discussion of § 1926.1209.

It is extremely important that attendants understand their duties, stay in contact with the entrants, and remain alert to conditions inside and outside the PRCS. The attendant may be in the best position to warn the entrants of hazardous conditions developing outside the space and impending danger within the space, and to recognize physical and behavioral changes in the entrants that indicate that conditions within the space may be deteriorating. Should the entrant become incapacitated, the attendant often is an entrant's only contact with individuals outside the confined space. Therefore, the attendant is necessary to detect emergencies that develop in the space, and to summon emergency assistance before it is too late to prevent injury or death to the entrant.

Another commenter suggested that OSHA make it explicit that the attendant must remain outside the confined space when monitoring atmospheric conditions of the confined space (ID–132, p. 3). This additional language is unnecessary because final § 1926.1209(d) already requires attendants to remain outside the confined space while fulfilling all of their duties under this section, including the duties specified in § 1926.1209(f).

Paragraph (g). Final § 1926.1209(g), which is identical to § 1910.146(i)(7), requires the attendant to call upon rescue and other emergency services as soon as he or she decides that authorized entrants may need assistance to escape from permit space hazards. This provision is necessary to ensure that rescue of authorized entrants occurs as soon as possible to maximize their chance of survival and limiting their injuries, as well as minimizing risk of injury to the rescue-service employees. The Agency notes that in some situations, the attendant may be the person designated to perform non-entry rescue and, therefore, may simply commence that rescue. If other personnel are necessary for non-entry rescue, or if entry rescue is necessary, then the attendant must summon those personnel immediately.

One commenter noted that the parallel language in proposed paragraph § 1926.1211(f)(6) did not specifically require the attendant to ''summon'' the rescue service (only to ''inform'' them), and requested that OSHA insert language requiring that action (ID–210, Tr. p. 357). OSHA responded to this comment by adopting the language of the general industry standard in final § 1926.1209(g).

Paragraph (h). Final § 1926.1209(h), which is identical to the general industry standard at § 1910.146(i)(8), requires the attendant to take the actions specified in § 1926.1209(h)(1) through (h)(3) to prevent unauthorized persons from entering a permit space while entry is taking place. OSHA recognizes that there are individuals who may mistakenly believe that they are to work on a task in the space, or who may simply wander by or attempt to enter into the space unaware of the dangers of the PRCS. Final § 1926.1203(b) requires the employer to notify the controlling contractor and other specified employees, as well as the employees' authorized representatives, about the location of, and dangers posed by, the space. However, if someone other than an authorized entrant happens to approach the PRCS, § 1926.1209(h)(1) specifies that the attendant must make that individual aware that he/she must stay away from the PRCS. Some construction sites may be accessible to the public, so the attendant also would be responsible for warning members of the public who may attempt to enter a permit space at the site. Should an unauthorized person enter the PRCS, paragraph (h)(2) of § 1926.1209 requires the attendant to advise him/her to exit the space immediately. This provision protects employees who enter permit spaces without proper authorization, training, or equipment, from the hazards of the permit space, and prevents injury to the entrants already in the permit space from the actions of unauthorized entrants and the items they may carry into the space.

Because an attendant may not have supervisory authority, or because the errant individual may work for another employer at a multi-employer construction site, an attendant may not have the authority to stop unauthorized individuals from entering the PRCS, or to require them to exit once they are inside the space. Therefore, paragraph (h)(3) of § 1926.1209 requires the attendant to notify the entry supervisor, along with the authorized entrants, of this situation, and to evacuate if necessary, as unauthorized entry will typically create a prohibited condition under the permit. Accordingly, OSHA does not encourage or require attendants to expose themselves to potential harm by physically preventing entry to any person.

Paragraph (i). Final § 1926.1209(i), which is identical to the general industry standard at § 1910.146(i)(9), requires employers that designate attendants to perform non-entry rescues to ensure that the attendants perform these rescues in accordance with the employer's rescue procedure. When properly executed, the attendant's performance of non-entry rescue can be the fastest and most effective means of successfully rescuing an entrant, while preventing injuries and deaths that may result from improperly executed entry rescue operations. However, if the employer designates the attendant to perform non-entry rescue but does train the attendant to perform non-entry rescue, or if the attendant does not operate winching equipment or perform other components of the rescue in accordance with the proper procedures, then the result could render the rescue ineffective and endanger the attendant (*e.g.,* improper line retrieval could cause the attendant to lose balance and fall into the permit space), delay rescue (and, thereby, endanger the entrant in need of rescue), or endanger other entrants.

Paragraph (j). Final § 1926.1209(j), which is identical to the general industry standard at § 1910.146(i)(10), requires that the attendant not engage in other activities that could distract him or her from attending to the permit space. The attendant could endanger the authorized entrants if distracted from these duties. If an attendant performs a task that diverts his or her attention from the attendant duties, an emergency condition inside or outside the space could go undetected until it is too late to prevent injury or death to the attendant. However, OSHA also recognizes that the attendant can perform some additional tasks safely, particularly those tasks that enhance the attendant's knowledge of conditions in the permit space. For example, passing tools to authorized entrants and remote monitoring of the atmosphere of the PRCS are among the types of duties permitted, provided the attendant does not enter the PRCS. Activities requiring close or prolonged concentration, or those activities requiring that the attendant be away from a location in which he can observe the PRCS, would likely interfere with attendant duties. Employers must not assign such activities to an attendant and must ensure that an attendant not engage in such activities. The Agency notes that, although the employer may assign attendants to more than one permit space at the same time under § 1926.1204(f), the employer must still

properly train and equip the attendant so that the attendant's role with respect to one space does not interfere with his or her duties with respect to other permit spaces. See also § 1926.1204(f)(1). In other words, the attendant's duty under § 1926.1209(j) applies separately with respect to each individual permit space.

Section 1926.1210—Duties of entry supervisors

The duties of the entry supervisor are critical to the safety of entrants working in a permit space. The employer must assign an entry supervisor who has the responsibility to supervise testing the atmosphere and identifying hazards both before and during entry, terminating entry when necessary, removing unauthorized entrants, and generally ensuring that the work performed in the permit space conforms to the permit program and the acceptable conditions specified on the permit. As noted in the preamble to the general industry standard, the entry supervisor has ''overall accountability for confined space entry'' (58 FR 4523). OSHA enumerated specific responsibilities in § 1926.1210 of the final rule, which is almost identical to § 1910.146(j) of the general industry standard. The final rule also is consistent with the entry supervisor requirements in the proposed rule, which were at proposed § 1926.1210(e)(2) and § 1926.1211(d)(1) and (d)(2).[24]

The introductory language to § 1910.146(j) refers to ''the employer.'' In this final rule, OSHA instead refers to ''the entry employer'' to clarify how this rule applies on multi-employer worksites. This revision is non-substantive; in both cases, the requirements apply to each employer establishing the permit program for a permit space.

One commenter suggested that OSHA use ''competent person'' in place of ''entry supervisor'' to ''be more consistent with other construction standards'' (ID–124, p. 8). Although some employers in the construction industry may not be as familiar with the term ''entry supervisor,'' OSHA is retaining the language of the general industry standard because the term is clear and intuitive, and the majority of commenters seemed familiar with that terminology.

Paragraph (a). Final § 1926.1210(a), which is identical to the general industry standard at § 1910.146(j)(1), except for a non-substantive clarification, requires the employer to ensure that each entry supervisor is familiar with, and understands, the hazards that entrants may encounter during entry, including information on the mode, signs or symptoms, and the consequences of exposure to these hazards. Consistent with its approach in other provisions noted earlier, OSHA changed the use of the term ''know,'' found in corresponding § 1910.146(j)(1), to ''is familiar with and understands'' in this final rule to clarify that the entry supervisor must comprehend the hazards that entrants may encounter.

In the discussion of the duties of the entry supervisor in the preamble to the general industry standard, OSHA explained that, in light of the overarching responsibility of the entry supervisor for the safety of all entrants, it is ''only reasonable that he or she be expected to know at least as much, if not more, than authorized entrants and attendants'' (58 FR 4523). That knowledge is particularly important in the context of construction, where high turnover of employees and changes to the work site may be more frequent than for general industry. As an individual with the authority to terminate entry and cancel the entry permit, it is essential that the entry supervisor recognize hazardous conditions and telltale indications (signs, symptoms, and characteristic effects) that a hazard from within or outside the permit space is affecting employees engaged in the PRCS operations. By meeting the knowledge requirements of final § 1926.1210(a), the entry supervisor will be able to effectively identify emergency situations by observing employees involved in entry operations.

Paragraph (b). Final § 1926.1210(b), which is identical to the general industry standard at § 1910.146(j)(2), requires the entry supervisor to verify that the employer performed all tests specified by the entry permit, and that all procedures and equipment so specified are in place before he or she may sign the permit and allow entry. The paragraph also specifies that the entry supervisor must verify this information by checking the corresponding entries on the permit. These preliminary checks are necessary to ensure that the conditions in the space are within the acceptable entry conditions—hazard levels are as planned, and protective measures are in place, working properly, and are effective—before entry operations commence.

Paragraph (c). Final § 1926.1210(c) requires the employer, through the entry supervisor, to stop the entry and cancel (or suspend) the permit, as set forth by final § 1926.1205(e), when certain conditions change inside the permit space. By requiring the entry supervisor to terminate the entry permit under the specified conditions, the final rule ensures that the employees will exit the space if there is a deviation from acceptable entry conditions and, therefore, avoid encountering harm arising from prohibited conditions within the PRCS. Final § 1926.1210(c) is nearly identical to the general industry standard at § 1910.146(j)(3), except that the new final provision allows for the suspension of a permit, rather than a cancellation, as permitted in final § 1926.1205(e). For additional explanation of the suspension of the permit, see the explanation above of § 1926.1205(e).

To perform this duty effectively, an entry supervisor must be knowledgeable of the hazardous conditions and the tests and procedures used to monitor these conditions so the entry supervisor can respond in a timely manner to a developing hazard. While the entry supervisor need not personally perform the testing or monitoring (but may choose to do so if properly trained), the entry supervisor must possess the expertise necessary to oversee the testing and identify the hazards in the permit space, and is ultimately responsible for identifying deviations from acceptable entry conditions and other unsafe conditions. In the proposed rule, this requirement differed slightly from the requirements in the general industry standard and this final rule, but the result is the same: The entry supervisor must have all the information regarding the conditions and monitoring results required to know when it is necessary to terminate entry. This requirement remains in effect even if the entry supervisor assumes other duties, such as the duties of an entrant or attendant.

Paragraph (d). Final § 1926.1210(d), which is nearly identical to the general industry standard at § 1910.146(j)(4), requires the entry supervisor to verify that rescue services are available, and that the means for obtaining such services are operable. Because the employer must assign authority for safe permit entry operations to the entry supervisor, it is reasonable and consistent with the rescue provisions to specify that the entry supervisor verify that the rescue service is available, and that the means of summoning it in a

[24] OSHA specified in the proposed rule that the entry supervisor is responsible for evacuating employees from the permit space under specified conditions, and for terminating entry and canceling the permit. OSHA included similar requirements in final § 1926.1205(e) (permitting process), which is a more appropriate location than § 1926.1210 of the final rule because the requirements in § 1926.1205(e) address the process of terminating and canceling the permit.

timely manner is functioning properly. The only difference between this final provision and the general industry standard is that OSHA clarified in this final provision that, as part of the contact with the rescue service, the entry supervisor must verify that the rescue service will notify the supervisor if that service becomes unavailable during the entry process. This clarification corresponds to the employer's duty to confirm the continued availability of the rescue service in final § 1926.1211(a)(3), and is consistent with the proposed rule, which focused overall coordination of the permit entry operations on the entry supervisor (see 72 FR 67368 (Nov. 28, 2007)). Under both the proposed and final rules, the overall coordination duties include managing communications with the rescue service.

Paragraph (e). Final § 1926.1210(e), which is identical to the general industry standard at § 1910.146(j)(5) and consistent with the proposed rule at § 1926.1211(d)(2), requires the entry supervisor to remove unauthorized individuals who enter, or attempt to enter, the permit space during entry operations. Unauthorized entrants lack the safety training necessary to work in the PRCS, and the entry permit does not account for them. Their presence in a permit space not only poses a danger to them, but may also endanger the authorized entrants in the space.

In the final rule, OSHA requires attendants to warn persons near a permit space not to enter the permit space unless they have authorization to do so, but the attendant is not required to physically prevent unauthorized entry or to remove an unauthorized entrant (final § 1926.1209(h)). Under the final rule, as with the general industry standard, the entry supervisor has ultimate responsibility for preventing unauthorized entry and, if that fails, for removing the unauthorized person as quickly as possible from the permit space.

Paragraph (f). Final § 1926.1210(f) is identical to the general industry standard at § 1910.146(j)(6) and consistent with the proposed rule at § 1926.1211(e)(2). While paragraphs (a) and (b) of this section of the final rule set out the entry supervisor's responsibility to ensure that the permit space will be safe prior to entry, and paragraph (c) of this section makes it clear when the employer must cancel or suspend the permit, paragraph (f) requires the entry supervisor to ensure the maintenance of safe working conditions during the entry. In final § 1926.1210(f), OSHA sets out the entry supervisor's duty to assess the space when first assigned entry supervisor duties for the permit space, and at regular intervals thereafter.

OSHA recognizes that employers will need to replace entry supervisors occasionally for various reasons (for example, shift changes, lunch breaks, and regular rotations to other tasks at the job site). This final provision requires that, whenever there is a transfer of supervisory responsibility for a permit-space entry operation, the entry supervisor must assess the space and its hazards to maintain entry operations that are consistent with the entry permit and other requirements of the standard pertaining to the maintenance of acceptable entry conditions. This requirement ensures that the new entry supervisor reviews the permit and entry conditions and, consequently, has the information necessary for performing the duties enumerated in final § 1926.1210.

Final § 1926.1210(f) also requires that the entry supervisor assess the space and its hazards at intervals dictated by the hazards and operations performed therein. This requirement addresses the fact that conditions often change over time within a permit space, while providing the employer some flexibility to monitor different hazards at different intervals of time (see 58 FR 4524). Some hazards may develop rapidly and require more frequent assessments, such as when employees are in a space with a combustible gas already at 9 percent of its LEL, and the employer expects the operations to generate additional gas that will be controlled through ventilation. Other hazards, such as a slow leak of water from a pipe into a permit space, are likely to develop at a more predictable pace that would allow for less frequent monitoring. The type of operation and location or characteristics of the space may also require more frequent assessments by the entry supervisor, such as demolishing an underground wall near water pipes or performing construction work in a sewer system where even a small leak of an unidentified substance or other small change in the sewer space could potentially place the lives of the employees in danger.

One commenter asserted that it is not feasible for an employer to have only one entry supervisor because employees could perform no work in the permit space if the entry supervisor is absent (ID–107, p. 4). This commenter misunderstands the entry supervisor requirements. Final § 1926.1210(f) permits an employer to transfer the duties of the entry supervisor between employees, so long as each such entry supervisor has the proper qualifications to perform these duties and receives the appropriate information about the space from the previous supervisor.

Another commenter also was unsure whether the final rule requires the entry supervisor to be on the construction site at all times (ID–124, p. 7). The entry supervisor is responsible for crucial duties, including monitoring the space, physically removing unauthorized entrants, and terminating entry if necessary. Therefore, it is highly unlikely that the entry supervisor will be able to fulfill the required duties from a distance. However, the standard does not foreclose the potential for technology advances that may allow an entry supervisor to perform the required functions while located away from the permit space. If the entry supervisor is unable to perform his or her duties, either because he or she is not present on the site or for another reason, then the employer must terminate the entry or replace that entry supervisor with a supervisor properly qualified under this final section, and who makes the determinations required by final § 1926.1210(f), or the employer will not be in compliance with this final rule.

Section 1211 — Rescue and Emergency Services

An employer conducting a permit-space entry must include procedures for providing rescue and emergency service as part of its permit-space program (final § 1926.1204(i)). Final § 1926.1211 specifies requirements for that rescue and emergency service. The requirements in final § 1926.1211 are substantively similar to the corresponding provisions in the general industry confined spaces standard at § 1910.146(k). In general, the substance of the rescue provisions in the proposed rule was similar to that of the rescue provisions in the general industry rule, but the language of the general industry rule is more performance-oriented and includes fewer detailed requirements than the proposed rule.

Final § 1926.1211 uses the term ''rescue and emergency services.'' There are two types of rescue services addressed by this provision: Non-entry rescue and entry rescue, and the employer must determine which is appropriate. Emergency services are distinct: They are the services that must be used to retrieve the entrant when the employer's non-entry or entry rescue fails.

OSHA notes that during the rulemaking for the general industry confined spaces standard, a commenter raised a question as to whether an entry rescue service involved only off-site

rescue teams (58 FR 4525). The Agency made clear in that rulemaking that an employer could use an on-site team as long as the employer met all the criteria outlined in the standard. That rationale is equally applicable to this final rule. Consequently, the term ''rescue service'' in this standard does not exclude the use of an on-site entry rescue service. Indeed, as OSHA noted in the preamble to final § 1910.146, the need to respond as quickly as possible to an emergency within a permit space indicates a preference for on-site rescue teams wherever it is practical.

Some employers may prefer to establish an on-site rescue service. Other employers may prefer to rely on off-site rescue services, perhaps because they believe that they do not have the resources to train employees to perform rescue or because the ready availability of an adequate off-site rescue service makes an on-site capability unnecessary. The final rule allows employers to make arrangements for either on-site or off-site services.

Also, the final rule's phrase ''rescue service'' refers to all rescue personnel provided to remove entrants from permit spaces. It includes situations in which one person will be responsible for the rescue of authorized entrants (*e.g.,* when the employer uses non-entry rescue systems). In such situations, the evaluation and selection requirements of final § 1926.1211(a) will apply. The training and practice requirements of final § 1926.1211(b) also apply in these situations. Thus, OSHA is treating all rescue services alike, whether the service is on-site or off-site, whether the service is entry rescue or non-entry rescue, or whether the service consists of a multiple-person team or a single person.

One commenter asserted that the rescue requirements should differ based on the type of hazard that is present in or near the confined space (ID–077, p. 1). This standard does set different requirements based on the type of hazard in a PRCS, although the requirements in § 1926.1211(a)(1) and (a)(3)(i) establish performance-oriented criteria that vary based on the hazards in the permit spaces. Final § 1926.1203(e) allows an employer to use alternative entry procedures different than those required by the rest of this standard under certain circumstances. Final § 1926.1203(g) allows an employer to reclassify a PRCS as a non-permit confined space when the employer meets the requirements of that paragraph. The rescue requirements in this final standard do not apply when an employer is using the procedures in final §§ 1926.1203(e) or 1926.1203(g). When an employer is working within a PRCS that does not meet the criteria in one of those paragraphs, however, the rescue requirements are the same for all hazards severe enough to trigger the PRCS program required by final § 1926.1204.

Paragraph (a). The introductory text in final § 1926.1211(a), which is identical to the general industry standard at § 1910.146(k)(1), introduces the requirements for designating rescue services. This paragraph emphasizes the evaluation that an employer must perform of available rescue and emergency service resources before designating a rescue provider for the purposes of this standard as required at § 1926.1204(i) of this final rule. The requirements of this paragraph apply equally to both on-site (employees of the entry employer or controlling contractor) and third-party rescue services.

One commenter asserted that some third-party rescue services, such as fire departments, are unwilling to be the designated rescue service due to liability concerns (ID–075, p. 8). Another commenter asserted that relying on local fire departments to provide third-party recue services can be problematic because the rescue service is not designed specifically to provide confined space rescue at a particular worksite (ID–210, Tr. p. 192). These comments imply that OSHA requires employers to designate the local fire department as the rescue service, which is not the case. In the final rule, OSHA provides employers with much flexibility in choosing its third-party rescue service if the employer elects to rely on a third-party rescue service.

Contrary to the assertion of one commenter (ID–107 p. 4), both the proposed rule and the general industry standard require employers to provide a rescue service for entries, even if a third-party rescue service is not available. (See proposed § 1926.1211(h) and 72 FR 67377–78; 29 CFR 1910.146(d)(9); 58 FR 4524–27; and 63 FR 66018, 66023 (Dec. 1, 1998).) If one third-party rescue service will not assume the responsibility of providing rescue under this final rule, or is not adequately prepared to meet these rescue requirements, then the employer must either find a different third-party rescue service that is capable of performing this service, or train and equip its own employees to provide adequate rescue service.

Paragraph (a)(1). Final § 1926.1211(a)(1), which is identical to the general industry standard at § 1910.146(k)(1)(i), requires an employer to assess a prospective rescue service's ability to respond to a rescue summons in a timely manner. Final § 1926.1211(a)(1) provides that the hazards identified in the permit space determine timeliness. This provision defines ''timeliness'' in terms of how quickly an entry rescue service needs to reach an entrant to prevent further serious physical damage that may result from hazards in the PRCS while the entrant is awaiting rescue. For example, as stated in the note to paragraph (a)(1), OSHA's respiratory protection standard at 29 CFR 1910.134, made applicable to construction by 29 CFR 1926.103, requires standby rescue personnel equipped with respiratory protection when employees are working in atmospheres that require respiratory protection because the atmospheres are immediately dangerous to life or health (IDLH). Consistent with that requirement, the timeliness requirement in this final rule also means that employers must ensure that an appropriate rescue service is on site for IDLH permit entries. An atmosphere in a permit space where an exposed entrant could suffer irreversible impairment within four to six minutes would meet the definition of an IDLH atmosphere. However, because not all permit spaces pose the same immediate dangers as those spaces with IDLH atmospheres, employers may use a less resource-intensive and more measured response capability for situations in which the need for a nearly instant response is not present. For example, in appendix F to § 1910.146, OSHA explained that if the danger to entrants is restricted to mechanical hazards that would cause injuries (*e.g.,* broken bones, abrasions) a response time of 10 or 15 minutes might be adequate.

At least one commenter was unsure what constitutes a response in a ''timely manner'' (ID–121, p. 5). Another commenter suggested that OSHA identify the factors in § 1910.146(k)(1)(i) of the general industry confined spaces standard that it would use to analyze whether a rescue response is ''timely,'' and apply them in the construction standard (ID–129, p. 3). The factors that apply in general industry are relevant in evaluating timeliness in this final rule.

When the Agency added the parallel rescue selection requirements to paragraph (k) of § 1910.146, it included a substantive discussion of ''timely'' rescue in the preamble, and concluded that the determination of timeliness ''will be based on the particular circumstances and hazards of each confined space, circumstances and hazards which the employer must take into account in developing a rescue

plan'' (63 FR 66023). As the note to new § 1926.1211(a)(1) makes clear, the same approach applies in this final rule. Employers must consider the known hazards of in the space, the time it takes to reach the permit space, as well as the time it will take to enter the space and retrieve employees from inside the space, when determining what is a ''timely'' response. Several commenters acknowledged that so many factors could affect whether a response is ''timely'' that it is not practical for OSHA to adopt a bright-line timeframe that would work in all scenarios (ID–090, p. 1; ID–108, p. 3; ID–116, p. 4). As noted in the discussion above, OSHA identified some of the factors that determine whether an employer's response to an emergency is ''timely,'' but these factors are not exclusive. The standard as a whole will prevent employee exposure to hazards, but employers must develop rescue plans that anticipate and minimize potential harm to employees in the event an employee becomes trapped or exposed to an atmospheric hazard. For example, if a permit space contains a potential IDLH atmosphere that the employer will control through ventilation, the employer has a duty to ensure that the ventilation is effective, but also has a separate duty to plan for rescue in the event that the ventilation fails and an employee becomes trapped in the increasingly hazardous atmosphere.

The deaths of two workers during a sewer entry illustrate the potential consequences of inadequate rescue planning: Not only did the two employees enter the space without a permit, rescue plan, or retrieval lines, but the employer also did not assess a potential rescue service. See *S. J. Louis Construction,* OSHRC Docket No. 12–1045 (2013) (Welsh, ALJ). The first worker was overcome quickly by a hazardous atmosphere in the sewer manhole, and the second worker was also overcome after he entered the sewer manhole to attempt rescue. The firemen who responded first were not trained or equipped for permit-space entry and had to summon a different rescue service. The first worker was washed down the sewer line before the second rescue service arrived and was trapped underwater so that it took nearly a day to retrieve his body.

One commenter asserted that, when using a third-party rescue service, it is infeasible for the third-party rescue service to maintain constant contact with construction sites, and not reasonable for outside services to track frequent changes in a confined space's configuration (ID–116, p. 4). Another commenter asserted that it is too costly to require rescue services on site, and that OSHA should allow an employer to merely establish a rescue plan to address accidents (ID–108, p. 5). Neither final § 1926.1211(a)(1), nor any other paragraph in final § 1926.1211, requires an employer's rescue service to be on the construction site at all times, absent an IDLH atmosphere or other hazard that would require immediate rescue, or to be in constant contact with the construction site.

In general, final § 1926.1211(a) only requires an employer to determine that the rescue service is capable of responding to an emergency in a timely manner. However, compliance may require the employer to communicate with an off-site rescue service immediately prior to each permit-space entry unless the employer has been assured that personnel are always available and able to respond in a timely manner. Section 1910.146 addresses the scenario in which the designated rescue service is a local fire department that cannot guarantee that the rescue team will available during the employer's entire permit-space entry operations; in such a case, the employer must ensure close communication with the rescue service during entry operations so that, if the rescue service becomes unavailable while an entry is underway, the employer can abort the entry immediately. May 23, 2008, letter to Jonathan Pennington. To facilitate this communication, OSHA requires in final paragraph (a)(3)(iii) that the entry employer select a rescue provider that agrees to notify the entry employer in the event the rescue service is unavailable. Entry operations must not resume until the entry supervisor verifies that rescue services are available (final § 1926.1210(d)).

One commenter asserted that OSHA should focus on the capability of the rescue service to provide life support, and not whether the rescue response is ''timely'' (ID–017, p. 2). For example, the provision should focus on requiring someone trained in space-specific rescue techniques, first aid and cardiopulmonary resuscitation, who can gain safe access to the patient, stop the bleeding, administer CPR, and perhaps effect rescue. Final § 1926.1211(a)(2) specifies the requirement to assess whether a rescue service is capable of providing adequate and effective rescue service. Final § 1926.1211(a)(1) requires the employer to assess whether the rescue service is capable of applying such skills in a timely manner.

Paragraph (a)(2). Final § 1926.1211(a)(2), which is identical to the general industry standard at § 1910.146(k)(1)(ii), requires an employer to assess a prospective rescue service's ability to provide adequate and effective rescue services. This requirement is necessary to ensure that the rescue service can perform rescue safely and effectively.

Many third-party emergency responders may be able to provide proper permit-space rescue functions for spaces that do not require immediate, stand-by rescue capability, but not all responders have this ability. Each employer relying on these services must verify that the emergency responder has the training, equipment, ability, and willingness to perform rescue for confined spaces in its facility.

In evaluating a prospective rescue provider's abilities, the employer also must consider the willingness of the service to become familiar with the particular hazards and circumstances faced during its permit-space entries. Paragraphs (a)(4) and (a)(5) of final § 1926.1211 require the employer to provide its designated rescuers with information about its confined spaces and access to those spaces to allow the rescuers to develop appropriate rescue plans and to perform rescue drills. A rescue service's receptiveness to this information is directly relevant to its ability to function appropriately during actual rescue operations.

Two commenters suggested that OSHA provide additional guidance about how employers that use a third-party rescue service are to verify that they meet the requirements in final § 1926.1211(a) (ID–099, p. 3; ID–132, p. 3). OSHA has provided performance-based requirements that are closely aligned with the general industry standard. Therefore, OSHA does not believe that it will be difficult for an employer to determine whether the rescue service meets these requirements. However, OSHA is willing to provide additional guidance as necessary.

Paragraph (a)(3). Final § 1926.1211(a)(3), which is identical to § 1910.146(k)(1)(iii) except for the addition of § 1211(a)(3)(iii), introduces the requirements that a designated rescue service must meet. Final § 1926.1211(a)(3) requires the employer, after performing the evaluations required by paragraphs (a)(1) and (a)(2) of this section, to select a rescue provider that meets the requirements of this paragraph. Therefore, it is not sufficient for an employer simply to perform the evaluations required. The employer also must use the results of those evaluations to select a rescue service that will meet the requirements of this standard.

Final § 1926.1211(a)(3)(i), which is identical to the general industry

standard at § 1910.146(k)(1)(iii)(A), requires an employer to designate a rescue team that is capable of reaching a victim in an appropriate amount of time. This requirement is an important element of a preplanned rescue because it eliminates further risk of injury and death resulting from an unnecessary lapse of time between an emergency and when the rescue service affects the rescue. Delays may occur for reasons such as: The travel distance from an off-site location is too far away from the permit space; time needed to gather rescue equipment from storage; lack of training needed to use the rescue equipment properly; or the rescue service is off-duty at the time of the emergency. As discussed above, the time required to respond to a rescue summons varies with the hazards posed by the permit space, and the entry employer must consider the hazards involved in its permit-space work and select an appropriate rescue service.

Final § 1926.1211(a)(3)(ii), which is identical to the general industry standard at § 1910.146(k)(1)(iii)(B), requires an employer to designate a rescue team that is capable of providing proficient rescue service. This requirement is an important element of a preplanned rescue because it eliminates further risk of injury and death resulting from improperly equipped or untrained rescuers. At a minimum, the designated service must comply with final § 1926.1211(b).

Final § 1926.1211(a)(3)(iii) requires an employer to designate a rescue service that agrees to notify the entry employer immediately if it becomes unavailable during an entry operation. There is no corresponding provision explicitly required in § 1910.146, although § 1910.146(k)(1)(iii)(A) implies such a duty. For a rescue service to be effective, it must be available when the entry employer is conducting permit-space entry operations. This provision will promote employee safety by ensuring that entry employers know when their designated rescue services are unavailable.

Final § 1926.1211(a)(3)(iii) enhances an employer's knowledge about the availability of a rescue service during entry operations. This final provision, in combination with other provisions of this final standard, ensures that entry employers know that the rescue service is available. Final § 1926.1210(d), and § 1910.146(j)(4), both require the entry supervisor to verify that the rescue service is available.

Final § 1926.1211(a), and § 1910.146(k)(1), address the employer with a designated third-party rescue service that cannot guarantee that its rescue team will be available during the employer's permit-space entry operations. In such a case, the employer must maintain close communication with the rescue service during entry operations so that, if the rescue service becomes unavailable while an entry is underway, the employer can instruct the attendant to abort the entry immediately. May 23, 2008, letter to Jonathan Pennington. Consistent with these two provisions, the rescue service needs only to communicate its unavailability when the entry employer informs it that entry operations are underway. Although the employer is less likely to know exactly when a third-party service is responding to another call that would make the service unavailable to perform rescue from the PRCS, this requirement also applies to on-site rescue services if, for example, the on-site service members become involved in other work activities that prevent them from responding in a timely fashion to a rescue summons.

Paragraph (a)(4). Final § 1926.1211(a)(4), which is identical to the general industry standard at § 1910.146(k)(1)(iv), requires an employer to inform the designated rescue service of the known hazards associated with the permit space in the event rescue becomes necessary. This provision provides the rescue service with information about hazards and conditions in the permit space that will protect the rescue-service employees who enter the permit space for rescue operations, training, or any other purpose.[25] Compliance with this paragraph, as well as with paragraphs (a)(1) and (a)(2) of this section, would require the employer to provide this information to the rescue service prior to permit-space entry. Similarly, if an entry involves hazards not usually encountered by the rescue service, or hazards or a configuration that would require the rescue service to use equipment that it does not always have available, the employer would have to notify the rescue service of these hazards and conditions prior to beginning the entry operation. In most cases, this information exchange can be accomplished during a single conversation, but additional conversations would be necessary in the event of changes in the conditions or configuration of the space after the initial conversation.

[25] To meet the requirements of this provision, the employer would have to inform the rescue service that the employer selected the service to rescue its employees during entry operations, and that the employer is relying on the rescue services to perform these rescues when necessary.

Paragraph (a)(5). Final § 1926.1211(a)(5), which is identical to the general industry standard at § 1910.146(k)(1)(v), requires an employer to provide the designated rescue service with access to all permit spaces from which the rescue service may need to perform a rescue. The purpose of the provision is to provide the rescue service with an opportunity to develop appropriate rescue plans and to practice rescue operations. OSHA believes that this provision will allow the rescue service to become familiar with the configuration and features of the permit space to which the employer may summon it to perform rescue operations, and thereby develop appropriate rescue plans and practice rescue operations.

Access to the permit space or a simulated permit space for the purpose of planning and practicing rescue operations increases the probability that rescue operations will proceed more efficiently and effectively, thereby reducing the probability of serious injury or death to authorized entrants and rescuers during an actual entry-rescue operation. Note that this provision does not require the third-party rescue service to use the permit spaces for practice; final paragraph (a)(5) simply requires that the entry employer provide access to the space. In performing practice rescues, the third-party service may use any representative permit spaces that replicate the permit spaces from which it may perform a rescue in accordance with final § 1926.1211(b)(4).

Paragraph (b). Final § 1926.1211(b) sets forth four requirements for an employer that has employees designated to provide rescue service. Paragraph (b) is identical to the general industry standard at § 1910.146(k)(2), except that OSHA replaced references to employers' responsibilities for ''employees'' collectively with references to employers' responsibilities to ''each employee''; this revision emphasizes that an employer's responsibility in this area is to each employee individually.

Final § 1926.1211(b) applies to the employer of the rescue service (including non-entry rescue personnel) when that employer also is the entry employer or other employer performing work integral to construction. When the employer is a third-party rescue service that does not perform work integral to construction, then the work performed by the rescue service is covered under the corresponding general industry standard at § 1910.146(k)(2). OSHA believes that it is important to protect employees who enter permit spaces to perform rescue duties regardless of the

employer responsible for the rescue team. By making this final paragraph substantively identical to § 1910.146(k)(2), there are no differences in the requirements for rescue-team employers under the general industry or construction confined space standards. The Agency determined that this requirement is necessary to provide protection for employees in on-site rescue teams, while employees of third-party rescue services will be protected under identical general industry requirements. This is consistent with the intent of the Agency to protect both on-site rescue teams and third-party rescue services in the general industry confined spaces standard (58 FR 4527).

One commenter, representing a company involved in sewer work, asserted that it is neither practical nor feasible for employers performing construction to employ their own rescue personnel (ID–107, p. 4). However, neither proposed § 1926.1213(c) nor final § 1926.1211(b) specify that entry employers must hire additional, rescue-specific, personnel. Rather, employers that train and equip current employees as required by this standard may designate their own employees to provide permit-space rescue, just as under the general industry standard. Also, the commenter referred to a ''typical sewer construction/maintenance project,'' implying that the company it represents engages in maintenance projects that would be subject to the same requirement in the general industry standard. However, the commenter did not indicate that this company, or any other company, found it infeasible to comply with the general industry standard. The commenter did not provide any explanation for why compliance with the requirement in this final standard would be more burdensome than compliance with the general industry work.

Other commenters incorrectly asserted that OSHA would require construction employers to become experts in rescue service (ID–126, pp. 2–3; ID–075, pp. 8–9). Final § 1926.1211(b) does not prohibit employers from using a third-party rescue service; it merely permits employers to use their own employees to provide rescue service. The general industry confined spaces standard at § 1910.146(k) also provides the option of using an employer's own employees to provide rescue services. At least one commenter supported the provision permitting construction employers to use their own employees to provide rescue service, noting that the use of a third-party rescue service is not always effective because of the location of the site or the competency of the third-party rescuers (ID–143, p. 2).

Paragraph (b)(1). Final § 1926.1211(b)(1), which is nearly identical to the general industry standard at § 1910.146(k)(2)(i), requires an employer with employees designated to provide rescue service to equip each affected employee with PPE and to train the employees, at no cost to those employees, how to use the PPE safely. The provisions in this paragraph will help the employer prevent injuries and deaths that could occur without the appropriate PPE, or because the employees did not receive proper training in use of such equipment. Employers still must select and use PPE in accordance with subpart E of part 1926 and all other applicable requirements. These requirements, which include proper selection and use of respirators in accordance with the requirements of the respiratory protection standard at § 1926.103, continue to apply when workers are working in a permit space.

Paragraph (b)(2). Final § 1926.1211(b)(2), which is nearly identical to the general industry standard at § 1910.146(k)(2)(ii), requires an employer with employees designated to provide rescue service to train each employee performing the rescue service, and to ensure that these employees successfully complete the training required for authorized entrants.

This provision would ensure that rescue-service employees can perform their assigned duties proficiently and safely under hazardous permit-space conditions. Lack of such training would endanger the rescue-service employees, those in need of rescue, and others affected by the permit-space rescue operations. Training in the proper use of rescue equipment will help the employer eliminate injuries and deaths caused by the improper use of such equipment. Rescue-equipment training must include training on all equipment that may be used in conducting a rescue in the PRCS, such as the care and inspection of breathing and ventilation gear and emergency-evacuation equipment, and the use of two-way radios and fire-fighting equipment. Training in the requirements for authorized entrants also will protect the rescue-service employee, those in need of rescue, and others affected by the rescue operations because rescue-service employees will be familiar with the hazards of permit spaces and the modes of communicating with attendants. The rescue service may need to use the same modes of communication to communicate with a trapped entrant.

One commenter suggested that OSHA require an employer to train all of its employees, not just entry rescue-service employees, on how to perform rescue duties (ID–150, p. 3). OSHA disagrees with this commenter because, under final § 1926.1211, training for employees not authorized to perform rescue is not necessary for an employer to be ready to provide effective and timely rescue service.

Paragraph (b)(3). Final § 1926.1211(b)(3), which is nearly identical to the general industry standard at § 1910.146(k)(2)(iii), requires an employer with employees designated to provide rescue service to train the employees performing both non-entry and entry rescue services in basic first aid and cardiopulmonary resuscitation (CPR). The Agency believes this requirement is necessary because of the hazards and resultant injuries that may occur in permit spaces. This requirement also will improve the probability that the injured employees survive until higher levels of medical treatment become available.

Paragraph (b)(4). Final § 1926.1211(b)(4), which, apart from an addition discussed below, is identical to the general industry standard at § 1910.146(k)(2)(iv), requires an employer to ensure that the designated rescue service practices rescue operations at least once every 12 months. OSHA believes this training requirement for entry-rescue service employees is necessary to maintain proficiency in entry-rescue procedures and the use of rescue equipment. This training also will ensure that the employer trains the entry rescue-service employees on all revisions to entry-rescue procedures, and that the employees are cognizant of any other new information regarding entry rescue. Practicing rescues in a permit space or a representative permit space also highlights deficiencies in rescue procedures, and allows for revisions of those procedures before they can adversely affect the safety of rescue-service employees or employees in need of rescue during an actual rescue operation.

One commenter read the proposed rule as prohibiting rescue services from conducting practice rescues in the actual permit space (ID–107, p. 4). There was no such prohibition in the proposed rule, and by adopting the language of the general industry standard in this final rule, OSHA makes it clear that rescuers may practice by removing dummies or real persons ''from the actual permit spaces or from representative permit spaces.'' If the employer does not use actual permit

spaces for practice, representative permit spaces must simulate the types of permit spaces from which the rescuers may perform rescues with respect to opening size, configuration, and accessibility.

Proposed § 1926.1213(d) provided that this practice is not necessary when the affected employees properly performed rescue in the same, or similar, permit space during the last 12 months. This proposed language made explicit the existing rule under the general industry standard, which, in its original preamble, stated that satisfactory performance of one or more actual rescues in the same, or similar, space during the 12-month period prior to the training anniversary date could substitute for a practice rescue (58 FR 4528). OSHA previously recognized in other standards (such as in § 1910.120—Hazardous waste operations and emergency response) that actual experience at a particular task can be at least as valuable as a practice session or other type of training. However, just as the rescue service must practice in the same spaces or spaces similar to the ones in which it is to provide rescue, for an actual rescue to take the place of a practice rescue, it must be in the same or similar space. Also note that unsatisfactory performance of a rescue indicates the need for further training and, therefore, cannot substitute for a practice rescue. This exception applies when the rescuers perform a rescue operation in a satisfactory manner and the entrants, through factors beyond the rescuers' control, do not survive. Therefore, this final rule incorporates the exception from the proposed rule by adopting the performance-based language of the general industry standard.

One commenter asserted that the requirement to perform a simulated rescue is infeasible in situations where the rescue service is a small local fire department (ID–090, p. 2). Nevertheless, the commenter volunteered that performing the simulated rescue is the safest approach. When a third-party rescue service does not have the resources to perform this simulated rescue, the employer must either train its own employees to provide rescue or designate a third-party rescue service that is capable of complying with all of the rescue requirements in final § 1926.1211(b).

Another commenter asserted that OSHA wrote proposed § 1213(c)(6) in a manner that allowed an entry employer's employees to enter a confined space even when the initial practice rescue occurred 15 years before the entry takes place (ID–013, p. 5). This commenter misread the requirement. Final § 1926.1211(b)(4), as in the proposed rule, requires an employer to conduct a practice rescue at least once every 12 months after the initial practice rescue. Therefore, 12 months minus one day is the longest period allowed between a practice rescue and the moment the employer begins entry operations.

Another commenter asked how employers who designate a third-party rescue service can verify that the service practices rescue every 12 months (ID–099, p. 3). The duties in paragraph (b) apply to the ''employer whose employees have been designated to provide permit space rescue.'' Therefore, if an entry employer hires a third party to provide rescue services, the final standard does not require the entry employer to verify the practice of the third party. However, paragraph (a), which applies to all employers that designate rescue and emergency services, requires those employers to evaluate the rescue proficiency of the rescue team, even a third-party rescue team, and select a team that is proficient. This commenter also asserted that it is too burdensome to fulfill the requirement to practice rescue operations, but did not provide a specific reason why compliance is infeasible (*id.*). Both the general industry confined spaces standard at § 1910.146(k)(2)(iv) and NFPA 1670, sec. 7.1.3.4 (2009 ed.) also specify a requirement to practice rescue operations found in final § 1926.1211(b)(4). Without a specific reason to depart from this established procedure, OSHA finalized this provision to be similar to proposed rule § 1926.1213(c)(6) and the corresponding provision for general industry confined spaces at § 1910.146(k)(2)(iv).

Paragraph (c). Final § 1926.1211(c), which is substantively similar to the general industry standard at § 1910.146(k)(3), requires that an employer use non-entry rescue, instead of entry rescue, unless non-entry rescue is more dangerous or ineffective than entry rescue. The major difference between this final provision and § 1910.146(k)(3) is that OSHA revised this final requirement to clarify the employer's obligation.

If the employer determines that it will use non-entry rescue, final § 1926.1211(c) also requires the employer to use a retrieval system or method. Accordingly, in general authorized entrants must wear retrieval devices and employers must use a retrieval system, in addition to confirming that emergency assistance is available in the event the non-entry retrieval fails.

Retrieval lines can be highly effective in assisting in the rescue of an unconscious or otherwise incapacitated employee from a confined space. The other major advantage of using retrieval lines for rescue is that it is not necessary to expose a rescuer to the hazards of entering the permit space to help remove an injured entrant. The effectiveness of retrieval lines in rescue was recognized by employers using this equipment for confined space entries during the general industry standard rulemaking (see 58 FR 4530), and mandatory use of retrieval lines is included in both ANSI Z117.1 and the general industry standard. However, the Agency recognizes that many spaces do not readily or safely accommodate the use of retrieval lines. For example, obstructions can snag the retrieval line, and the air lines and electric cords within the space can pose entanglement hazards. In addition, depending on the number of entrants and how much they move around in the space, the retrieval lines themselves could pose an entanglement hazard (see final § 1926.1211(c)(3)).

To allow for the greatest degree of safety in addressing these problems, the final standard requires the use of retrieval systems or methods whenever an authorized entrant enters a permit space, except in situations for which the employer can demonstrate that the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue. This is the approach taken in ANSI Z117.1 and the general industry standard, and OSHA believes that adopting this approach will provide the most effective protection for employees, with appropriate allowance for situations in which employers should not use retrieval systems.

When enforcing this provision, OSHA may inspect the permit space to determine whether a retrieval system would contribute to a rescue without increasing the overall risk of entry. Although some spaces may have configurations or hazards that warrant a slightly different approach, in general, the Agency intends to use the following factors in determining that a permit space does not require an employer to use a retrieval system: (1) The permit space has obstructions or turns that prevent transmitting pulls on the retrieval line to the entrant; (2) the permit space has projections that would cause injury to an employee making forceful contact with the projections during rescue; and (3) when an entry employee enters the permit space using

an air-supplied respirator and the non-entry rescuers cannot control the retrieval line so as to prevent entanglement of the retrieval line with the respirator's air line.

Section 1926.1211(h) of the proposed rule specified that employers must provide both entry and non-entry rescue, while proposed paragraph (h)(2)(i) specified that employers must summon an entry-rescue service whenever they initiate a non-entry rescue. One commenter was unsure whether employers must prepare to provide both entry and non-entry rescue (ID–098, p. 2). Another commenter asserted that it was too burdensome to require employers to prepare for both entry and non-entry rescue when working within or near a PRCS. (ID–120, p. 3). To address these concerns, OSHA based the final rule on the general industry confined space standard, but drafted the final rule to be more performance-oriented than the general industry standard.

The final rule provides for a ''back-up'' to non-entry rescue, much as the proposed rule did, but in a manner that is less burdensome for employers. Consequently, final § 1926.1211(c) requires that, if an entry employer determines that it will use non-entry rescue, it must confirm, prior to entry, that emergency assistance *will be available* in the event that non-entry rescue fails. OSHA expects this confirmation will typically involve a quick phone call or other communication to establish availability before making the first entry. The employer need not repeat such confirmation when there are several entries planned as part of the same project, provided the employer discusses during the initial contact with the rescue service the availability of emergency assistance for the expected duration of the project. This confirmation is especially important if the employer uses a 911 service or other third-party service that is small and has few teams on call because the service must be available to provide emergency assistance quickly when needed if the assistance is to be effective. In the event emergency assistance is summoned, OSHA anticipates that the emergency assistance provider will assume direction of the rescue and would request any other information it deems essential to effectively provide assistance, and notes that employers may be required by other laws to comply with the emergency assistance requests for information. OSHA is not requiring the employer to provide other specific information at the site out of concern that such a requirement might slow the rescue process if it compels the employer to provide information not needed by the emergency assistance provider. Note that arranging for emergency assistance is not the same as providing for entry rescue; emergency assistance is intended as the backup for the employer's rescue plan, whether the employer relied on entry or non-entry rescue. Entry rescue requires personnel trained to recognize the hazards associated with entry rescue and perform entry rescue duties. These personnel must be trained in performing entry rescues and must have practiced such a rescue within the past year. Employers must designate entry rescuers when non-entry rescue is not an appropriate option. Emergency assistance is intended to supplement employer rescue efforts and provide emergency care to employees injured on site and/or rescued from a confined space. Emergency assistance is required if there is a problem with a non-entry rescue or with an entry rescue.

The non-entry rescue requirements are based on the general industry standard, but provide additional guidance. While there is no corresponding provision stated explicitly in the general industry standard at § 1910.146, § 1910.146(d)(9) requires employers to develop plans to summon emergency services and for rescuing personnel. In final § 1926.1204(i), OSHA clarified that, if the entry employer uses non-entry rescue as the designated method of rescue, the employer must develop a procedure for summoning emergency assistance in case the non-entry rescue is not able to retrieve the entrant. Emergency assistance, such as a 911 emergency-responder service or an on-site or off-site entry-rescue team, may prevent such a situation from resulting in injury or death, so it is critical that emergency assistance be available to respond to the emergency.

In final § 1926.1211(c), OSHA also clarifies that, if the employer determines that it will use entry rescue, it must designate a rescue service that is capable of providing entry rescue. Additionally, it sets requirements for non-entry rescue systems; these requirements do not differ substantively from the corresponding general industry provision.[26]

[26] As with the general industry standard, the construction standard relies on existing fall-protection requirements to ensure the proper use of fall-protection equipment. Final § 1926.1211(c) does not address the issue of fall protection for entry into, and exit from, vertical type permit spaces; 29 CFR part 1926, subpart M, and the General Duty Clause, 29 U.S.C. 654(a)(1), govern fall protection in construction.

Paragraph (c)(1). Final § 1926.1211(c)(1), which is similar to the general industry standard at § 1910.146(k)(3)(i), requires an employer to provide each employee with a chest harness or full body harness for most non-entry rescue, but permits use of wristlets or anklets if the employer can demonstrate that the chest or full body harness is infeasible or creates a greater hazard. A chest or full-body harness prevents further injury should an employee become suspended during a rescue; without a chest or full-body harness, injuries can result from the unequal distribution of force on the body during suspension (see the preamble to OSHA's final rule on fall protection for construction at 59 FR 40672, 40702–40704 (Aug. 9, 1994), for a detailed discussion of this issue.)

One commenter asserted that OSHA should require the use of a full-body harness to perform rescue in every instance because it is the most effective means of rescue (ID–210, Tr. p. 68). OSHA disagrees with this commenter. Permit spaces come in many different sizes and configurations, which may make a chest harness more appropriate than a full-body harness in some circumstances.

This provision also provides that the employer must place the retrieval line attached to the harness on the entrant's back near shoulder level, over the entrant's head, or at another point that will establish a small enough profile for successful removal of the entrant from the permit space. One commenter agreed that it was safer to attach the line to the entrant's back, rather than the chest (ID–095).

Final § 1926.1211(c)(1) differs from the general industry standard at § 1910.146(k)(3)(i) in that it includes both anklets and wristlets as acceptable means of retrieval in lieu of a harness in limited circumstances. Employers can use wristlets or anklets in lieu of a harness only if the employer can demonstrate that the use of a harness is infeasible or creates a greater hazard to the employee, and that the use of the wristlets or anklets is the most effective alternative available. Proposed § 1926.1213(a)(4)(iii) permitted employers to use ankle straps, along with wristlets, for non-entry rescue under limited conditions. One commenter supported this proposed minor change from the general industry standard, asserting that anklets may be the safest alternative in horizontal entries (ID–094). However, because of the potential safety advantages of the chest and full-body harnesses, the Agency believes that it is necessary to limit the circumstances when employers

can use either wristlets or anklets to those in which the employer can demonstrate that use of a harness is infeasible or a greater hazard than wristlets or anklets because of the increased risk of employee injury during a rescue.

Paragraph (c)(2). Final § 1926.1211(c)(2), which is identical to the general industry standard at § 1910.146(k)(3)(ii), requires an employer to use a retrieval line attached to a mechanical retrieval device or fixed point outside the permit space so that non-entry rescue can begin as soon as needed. It also requires an employer to use a mechanical device to retrieve personnel from spaces more than five feet deep. This provision reduces the elapsed time between an attendant determining that a rescue is necessary and commencing the PRCS rescue operation by requiring the essential parts of the retrieval system to already be in place and attached to the mechanical device or fixed point. This requirement will eliminate further injury or death due to the delay resulting from locating and attaching retrieval-system parts and equipment.

The requirement to use a mechanical device for spaces more than five feet deep is consistent with the general industry standard and ANSI Z117.1. Securing the line to an anchor point or using an un-mechanized pulley for retrievals over five feet could endanger the authorized entrant because designated non-entry rescuers may not have sufficient strength and stamina to lift a disabled entrant over a vertical distance of more than five feet.

One commenter asserted that OSHA should require a mechanical retrieval device for all heights when the employer conducts non-entry rescue (ID–211, Tr. pp. 43–44). Another commenter asserted that OSHA should recognize that mechanical winches and pulleys are sometimes necessary based on job conditions (ID–108, p. 2). Neither commenter provided any evidence that attendants encountered difficulty retrieving entrants from distances of less than five feet, or pointed to any problems that arose in the context of the general industry standard or ANSI Z117.1, both of which include the same five-foot threshold. Without additional support for imposing this requirement, OSHA decided to retain the language from the general industry standard. Nothing in this standard, however, precludes use of mechanical retrieval devices for retrievals from heights of less than five feet.

Proposed § 1926.1213(a)(2)(iv)(B) also provided that movable equipment (for example, earth-moving equipment) that is ''sufficiently heavy to serve as an anchor point,'' may be used for that purpose only if effectively locked out or tagged out. Two commenters expressed concern about movable equipment as an anchor point. One commenter stated that many accidents occurred in the past when using a pick-up truck as a fixed point without notifying the driver of the truck, who then unexpectedly moved the truck. This commenter urged that this provision include ''proper protocols'' to ensure that such a situation did not recur (ID–025, p. 4). Another commenter noted that OSHA's construction standards do not include an equivalent to the Lockout/Tagout standard for general industry. The commenter, therefore, urged OSHA to include a more protective requirement, asserting that a requirement to ''lock out'' or ''tag out'' equipment, without additional detail, would ''be subject to various interpretations,'' and could result in unexpected activation of the equipment (ID–143, p. 2).

OSHA recognizes that on a construction site, a piece of moveable equipment may sometimes be the most accessible fixed point, but acknowledges the commenter's concern that such equipment is moveable, even if it has sufficient weight. Thus, under this final rule, an employer must ensure that any movable equipment used as a fixed point is ''fixed,'' meaning that it is sufficiently heavy (such as earth-moving equipment) to prevent movement, and that it is subject to additional precautions to prevent unexpected movement. Accordingly, as in the proposed requirement, to determine whether a retrieval line that is attached to moveable equipment is ''attached to a . . . fixed point'' under final § 1926.1211(c)(2), OSHA will evaluate whether the moveable equipment is effectively locked out or tagged out. In particular, OSHA will use the final rule's definitions of ''lockout'' and ''tagout'' in making that determination, which partially address the commenter's concern by bringing the lockout/tagout process closer to the protection offered by the general industry standard. For example, as part of the tagout process, an employer must ensure that tagout provides ''equivalent protection'' to lockout or that lockout is infeasible. Consequently, the employer must take whatever measures are necessary to prevent unexpected energization or movement of the equipment. Placing a ''do not move'' tag in the truck or other equipment would not be sufficient by itself. Typically, such measures include activating an emergency brake or similar device, removing the key from the equipment after ensuring that duplicates are not readily available on the site, placing a tag on the equipment to warn others not to start it, and informing any potential operator(s) not to move the equipment while it is serving as a fixed point for rescue. If the equipment is capable of activation by remote control, then the employer must secure the remote control or disable that capability to prevent unexpected movement.

Final § 1926.1211(c)(2) is performance oriented, and allows flexibility in the design specifications of the retrieval equipment, subject to the requirements of § 1925.1211(c)(3) (equipment must be suitable). One commenter asserted that there are many instances when the use of a tripod assembly with a three-way retrieval system is effective (ID–060, p. 1). Final § 1926.1211(c)(2) does not prohibit the use of such a device if it meets the requirements of this subparagraph. A different commenter asserted that final § 1926.1211(c)(2) should be performance based because of ongoing advancements in confined-space retrieval equipment, and suggested incorrectly that the proposed rule limited retrieval by specifying the use of anchor points or simple pulleys (ID–116, p. 3). The definition of ''retrieval system'' in final § 1926.1202 is performance based, and allows for technological advancements in retrieval equipment. This definition does not limit retrieval to the use of anchor points or simple pulleys.

One commenter asserted that final § 1926.1211(c)(2) should require an employer to have the retrieval system located at the confined space opening (ID–025, p. 4). Final § 1926.1211(c)(2) requires the employer to have the retrieval system available as soon as needed, which ensures that rescue can begin immediately. Another commenter asserted that the proposed language ''available as soon as needed'' was too vague, and that a retrieval device could satisfy this provision even if kept elsewhere on the worksite and not installed (ID–095, p. 4). Final § 1926.1211(c)(2) addresses this commenter's concern by requiring attachment of the retrieval line to the appropriate retrieval mechanism (a mechanical device if the depth exceeds five feet, or a fixed anchor point for shallower entries) ''in such a manner that retrieval can begin as soon as the rescuer becomes aware that rescue is necessary,'' thus ensuring that the line will be available and ready for use when needed. If the retrieval device is not at the opening of the permit space, then the employer is responsible for demonstrating that it could initiate

retrieval immediately as soon as the rescuer becomes aware that rescue is necessary.

Paragraph (c)(3). Final § 1926.1211(c)(3) prohibits an employer from using equipment that is unsuitable for retrieval, such as retrieval lines likely to become entangled or that are ineffective due to the configuration of the PRCS. Final § 1926.1211(c)(3) is similar to proposed § 1926.1213(a)(4). There is no corresponding provision in § 1910.146.

A retrieval device, for example, would not be suitable unless it is designed and rated for human use. The provision does not require certification of the retrieval system, but OSHA will accept certifications by manufacturers, as well as listing by a Nationally Recognized Testing Laboratory, as evidence of the proper design and rating. If the employer fabricates its own retrieval device, OSHA will look for evidence that the employer designed, manufactured, tested, and certified the retrieval device in accordance with generally accepted industry practices (for example, by a registered professional engineer).

This final provision prohibits the use of retrieval lines that have a reasonable probability of becoming entangled with the retrieval lines used by other authorized entrants, or due to the internal configuration of the PRCS. The Agency believes that there are situations in which the retrieval lines of two or more employees can become entangled, such as when the employees' work requires that they move around each other. There are also a variety of situations in which the configuration of the PRCS would interfere with a non-entry rescue and cause further serious injury to authorized entrants in need of rescue. For example, the permit space may have objects or equipment protruding from its walls, or sharp corners that may damage rescue equipment or prevent the use of certain types of non-entry rescue equipment.

Final § 1926.1211(c)(3) also prohibits the use of other unsuitable equipment, such as equipment that increases the overall risk of entry or impedes rescue of an authorized entrant. Under final § 1926.1211(c)(3), the mechanical retrieval device used must be appropriate for rescue service. This requirement follows the general industry standard, which was based on the record in that rulemaking indicating that incapacitated entrants could easily be bounced around, torn apart, or impaled if too much torque was applied to the retrieval line or the retraction of the line was not precisely controlled (see the general industry preamble discussion at 58 FR 4531). Accordingly, the employer must not use any mechanical device, such as a fork lift or backhoe, that could injure the entrant during rescue. Using a material hoist to both haul material and to serve as a rescue retrieval system during an entry operation also is not acceptable. In such a situation, the material hoist would not be available for rescue when it is hauling materials; further delay would result when, during a rescue operation, the attendant would have to detach the retrieval line from the materials and attach it to the employee requiring rescue. See Oct. 6, 1995, letter to Mr. Joseph Bouchard. The employer also must not use powered winches without a stop clutch or other power-limiting device. Such winches can cause injuries to an entrant if the entrant becomes entangled on an object inside the permit space, but the winch continues to pull the entrant (58 FR 4462, 4531 (Jan. 14, 1993)).

Prohibiting such unsuitable equipment will reduce the injuries and deaths that would result from the use of unsuitable retrieval equipment during rescue operations. The Agency did not receive any comments objecting to the propriety of this approach and, therefore, finalized this proposed prohibition of unsuitable rescue equipment.

Paragraph (d). Final § 1926.1211(d), which is identical to § 1910.146(k)(4), requires an employer to provide relevant information about a hazardous substance to a medical facility treating an entrant exposed to the hazardous substance if the substance is one for which the employer must keep a safety data sheet (SDS) or other similar information at the worksite. The Agency recognizes that such information may already be available to medical facilities from other sources (such as state emergency-planning commissions), and that SDS or similar written information may not be available in some instances. However, because the timely provision of this information may be critical to the proper medical treatment of an injured employee, and this final standard limits the requirement to SDS or other similar written information that the employer already must keep at the worksite, OSHA concludes that the potential significance of this information to the health of the employee outweighs any minimal burden on the employer associated with providing this information. Such information would aid emergency medical services and medical facilities in correctly diagnosing and treating the employee rescued from the permit space.[27]

Section 1926.1212—Employee Participation

This section provides for employee participation in confined space programs. The provisions in final § 1926.1212 are nearly identical to the provisions in the general industry confined spaces rule at § 1910.146(l). Final § 1926.1212 differs from § 1910.146(1) in that it refers to ''each affected employee'' rather than ''affected employees,'' to emphasize that an employer's responsibility in this area flows separately to each employee, but the employer's obligation remains unchanged. In the proposed rule, employee participation was limited to the requirement in proposed rule § 1926.1204(e) that employers offer entry employees the opportunity to observe the evaluation and monitoring of the permit space. One commenter suggested that OSHA restore the employee participation requirement from the general industry rule for the reasons OSHA added paragraph (l) to the general industry rule in 1998, and also noted that no commenters who favored using the general industry format raised any objections to its employee participation requirements (ID–0220 p. 26–28). OSHA agrees, and notes that the use of the general industry language is particularly warranted because the final rule requires a written permit-space program in final § 1926.1203(d), which was not required in the proposed rule, so final § 1926.1212(a) would ensure that employees bring their experience to bear regarding that program.

Paragraph (a). Final § 1926.1212(a), which is nearly identical to the general industry standard at § 1910.146(l)(1), requires employers to consult with affected employees and their authorized representatives in the development and implementation of the permit-space program required by final § 1926.1204. Allowing employees and their authorized representatives to participate in this manner will contribute to confined space safety. Commenters on the 1998 amendments to the confined space standard that added § 1910.146(l) noted that employees who work in confined spaces and their representatives are particularly well qualified to contribute to the task analysis that is a necessary step in developing a confined space program

[27] The employer must provide this information if other applicable Federal regulations (such as § 1910.1200—Hazard communication) or state regulations already require the employer to keep the SDS or other written information at the worksite.

(63 FR 66018 (Dec. 1, 1998)). One commenter provided an example of when he, as an employee representative, was able to identify dangerous adhesive fumes in a confined space that could have otherwise harmed the two employees in that space who did not identify the danger (ID–010). These employees are most familiar with the practices used during confined space entries. If those practices differ significantly from the practices planned by the employer, the employer needs to know of the differences and take appropriate steps to remedy any deficiencies in the permit-entry procedures. Likewise, employees may know of hazards within the space that non-entrants are not taking into consideration. This provision leaves the final contents of the confined space program up to the employer, but, by doing so, this provision should promote safety and avoid the need to develop a cumbersome procedure to resolve conflicts between employers and employees regarding confined space entries.

Final § 1926.1212(a) also is consistent with Section 2(13) of the OSH Act, 29 U.S.C. 652(13), which emphasizes employer-employee cooperation by stating that one of the purposes of the Act is to ''encourage joint labor-management efforts to reduce injuries and disease arising out of employment.'' Congress reiterated this purpose in a directive to OSHA to promulgate a Process Safety Management (PSM) standard; this directive explicitly provides for employee involvement in the development of the process safety management programs mandated by that standard (see Chemical Process Safety Management, Pub. L. 101–549, Title III, sec. 304(c)(3) (1990), reprinted at 29 U.S.C.A. 655 note (Supp. 1991)). OSHA also has a longstanding practice of encouraging and promoting employer-employee cooperation as exemplified in its 1989 Safety and Health Program Management Guidelines (54 FR 3904); these guidelines recognize the importance of involving employees in safety and health programs at the workplace. OSHA's experience in enforcing the employee-participation requirements under the PSM standard and the general industry confined spaces standard convinced the Agency of both the value and the utility of the provision in paragraph (a).

Paragraph (b). Final § 1926.1212(b), which is nearly identical to § 1910.146(l)(2), requires that affected employees and their authorized representatives have access to all information developed under this standard, with the clarification that this obligation applies to each employee. Other sections of this standard, such as final § 1926.1203(d), already require that employers make some information available to employees and their representatives. OSHA is adding this provision for purposes of emphasis and clarification. This provision emphasizes that employees and their representatives have a right to all information developed under the rule affecting their health and safety. Final § 1926.1212(b) does not require employees or their authorized representatives to request or review this information; however, it provides them with the option of requesting and reviewing the information should they choose to do so. Employers need not provide separate copies of the information to each employee; employers have flexibility in determining how to distribute the information so long as each employee can access it.

Section 1926.1213—Provision of Documents to Secretary

Final § 1926.1213 requires each employer who must retain documentation under this final rule to make that documentation available to the Secretary of Labor, or a designee, upon request. Final § 1926.1213 is similar to proposed rule § 1925.1219(e). There is no corresponding provision in § 1910.146. OSHA added this provision to enable the Agency to more accurately identify potential safety hazards at a worksite and to monitor compliance with the requirements of this standard.

The request from the Secretary or the Secretary's designee (for example, OSHA) may be either oral or written. Unless another provision of this standard requires employers to maintain a document at the worksite, the employer may maintain these documents off site as long as the employer can produce them readily to the requesting official, such as through electronic transmission to the worksite where OSHA is conducting an inspection. These documents pertain to the determinations made, and actions taken, regarding hazards. They provide valuable information to use when inspecting the worksite, including evaluating any potential safety hazards.

At least one commenter objected to this requirement, asserting that OSHA should have to demonstrate a need for a specific document and obtain a subpoena, and that this requirement is a paperwork burden and will not increase safety (ID–075, p. 11). Requesting such documentation is already part of OSHA's standard inspection practice under the general industry standard, as it is under many other standards. *See* CPL–02–00–100, CPL–02–00–150. This provision creates no new retention requirement—it merely confirms that when employers are already required to maintain records, they must make those records available to the Secretary. The provision provides employers with flexibility in where and how such records are maintained. Though there is a small cost to this provision, OSHA believes the safety benefit of identifying any potential safety hazards supports the inclusion of this provision.

IV. Agency Determinations

A. Legal Authority

The purpose of the OSH Act, 29 U.S.C. 651 *et seq.,* is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654, 655(b), 658.

A safety or health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A safety standard is reasonably necessary or appropriate within the meaning of 29 U.S.C. 652(8) if:

- It substantially reduces a significant risk of material harm in the workplace;
- It is technologically and economically feasible;
- It uses the most cost-effective protective measures;
- It is consistent with, or is a justified departure from, prior Agency action;
- It is supported by substantial evidence; and
- It is better able to effectuate the purposes of the OSH Act than any relevant national consensus standard.

See United Auto Workers v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (Lockout/Tagout II). In addition, safety standards must be highly protective. See *id.* at 669.

A standard is technologically feasible if the protective measures it requires already exist, available technology can bring these measures into existence, or there is a reasonable expectation for developing the technology that can produce these measures. See, for example, *American Iron and Steel Inst.* v. *OSHA* (*Lead II*), 939 F.2d 975, 980 (D.C. Cir. 1991) *(per curiam*). A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening

industry's long-term profitability or competitive structure. See *American Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490, 530 n. 55 (1981); *Lead II,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. See, for example, *Lockout/Tagout II,* 37 F.3d at 668.

Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information-gathering and information-transmittal provisions. 29 U.S.C. 655(b)(7). Finally, the OSH Act requires that when promulgating a rule that differs substantially from a national consensus standard, OSHA must explain why the promulgated rule is a better method for effectuating the purposes of the Act. 29 U.S.C. 655(b)(8). OSHA explains deviations from relevant consensus standards elsewhere in this preamble.

B. Final Economic Analysis and Final Regulatory Flexibility Analysis

1. Introduction

The Occupational Safety and Health Administration (OSHA) finalized its safety standard for confined spaces in construction work. When appropriate, this final standard aligns with the confined-spaces standard for general industry (29 CFR 1910.146), although it also has distinctive characteristics for construction worksites. The pre-existing rule on confined spaces in construction, 29 CFR 1926.21(b)(6), which this final rule replaces, is merely a general training requirement that lacks the specificity and protections that the general industry rule—and this final standard—provide.

The final standard differs from the earlier proposed standard. OSHA revised the proposal in response to numerous stakeholder comments, including those from the Office of Advocacy of the Small Business Administration (ID–119), which indicated that employers in construction in large part followed the general industry standard and, therefore, preferred that this final rule not depart substantially from general industry standard. However, this final rule includes important requirements (also present in the proposed rule) to address communication, worksite evaluation, and training, which are absent from, or not as clearly specified in, the general industry standard.

The final standard establishes practices and procedures that apply to employers that have workers who enter confined spaces during construction work, including major renovation projects. The final standard does not apply to routine maintenance activities, which the general industry standard covers instead.

Work in confined spaces involves a significant risk of death or serious injury, which compliance with this rule will reduce substantially. OSHA estimates that full compliance with this final rule will prevent an average of approximately 5.2 fatalities and 780 lost workday injuries each year. In particular, the Agency believes that compliance with this final rule will avert injuries and fatalities from causes such as asphyxiation, chemical burns, scalds, and poisonings.

Not all confined spaces pose occupational hazards. However, there are spaces that employees can enter only after employers follow specific procedures to ensure safety. Pursuant to the final rule, employers must develop and implement permit programs or use specified alternative procedures when employees work in such spaces. The standard sets forth the requirements for evaluating hazards, identifying and classifying confined spaces, and issuing permits or implementing alternative procedures. When the standard requires a permit to enter a confined space, the employer must maintain a written program and review it annually, and prepare and post a permit for the space. Employers also must adopt a variety of safety measures, including isolation procedures, atmospheric testing, ventilation, monitoring, and arrangements for rescue and emergency assistance.

As shown in Table IV–1 below, OSHA estimates that the final rule will result in yearly compliance costs of $60.3 million (using a discount rate of 7 percent), and yearly safety benefits, based on lives saved and injuries prevented, of $93.6 million. Therefore, the benefits of this final standard outweigh the costs of complying with its provisions, yielding net benefits of $33.3 million a year. Compliance with the final standard will result in approximately $1.55 of benefits for every dollar of costs.

Based on the analysis presented in this FEA, OSHA concludes that this final standard is technologically and economically feasible for all affected industries.

This FEA includes numerous analyses OSHA is required to perform, including the findings of technological and economic feasibility and their supporting materials required by the OSH Act as interpreted by the courts (in sections 5, and 7, which depend on results derived in sections 3 and 6); the analyses required by E.O. 12866 and E.O. 13563 (primarily in sections 2, 4, 6, and 9, though these depend on material in section 3); and those required by the Regulatory Flexibility Act (the final regulatory flexibility analysis is presented in section 8, but depends on or refers to results in section 3, 6 and 7 which in turn depend, in part, on materials presented in other chapters). Terminology and analytic methods and standards appearing in a particular chapter correspond to the source(s) of that chapter's requirements; for example, the legal concept of ''economic feasibility,'' which is a key subject of section 7, is not recognized in E.O.s 12866 or 13563 or their associated guidance document, OMB Circular A–4.

TABLE IV–1—NET BENEFITS

[Millions of 2009 dollars]

	7% Discount rate	3% Discount rate
Annualized Costs		
Evaluation, Classification, Information Exchange and Notification	$12.4	$12.2
Written Program, Issue Permits, Verify Safety, Review Procedures	$4.2	$4.2
Provide Ventilation and Isolate Hazards	$2.8	$2.7
Atmospheric Monitoring	$11.4	$11.3
Attendant	$3.6	$3.6
Rescue Capability	$8.2	$7.6
Training	$11.3	$11.3

TABLE IV–1—NET BENEFITS—Continued

[Millions of 2009 dollars]

	7% Discount rate	3% Discount rate
Other Requirements	$6.4	$6.3
Total Annual Costs	$60.3	$59.2
Annual Benefits		
Number of Injuries Prevented		780
Number of Fatalities Prevented		5.2
Monetized Benefits		$93.6
Net Annual Monetized Benefits (Benefits Less Costs)		
	$33.3	$34.4

The remainder of this FEA contains the following chapters:

2. The Need for Regulation
3. Profile of Affected Industries
4. Benefits and Net Benefits
5. Technological Feasibility
6. Costs of Compliance
7. Economic Feasibility Analysis and Regulatory Flexibility Determination
8. Final Regulatory Flexibility Analysis
9. Sensitivity Analysis
10. References

2. The Need for Regulation

OSHA previously considered non-regulatory alternatives and established the need for regulation of work in confined spaces when it promulgated the general industry standard (58 FR 4548). The Agency asserts that the same need for regulation applies when employers are entering these spaces to perform construction work. Confined spaces in construction expose employees to a variety of significant hazards, including engulfment, electric shock, burn, and atmospheric hazards that cause serious injury and death. Although better compliance with existing safety standards may prevent some of these incidents, research and analyses conducted by OSHA found that many preventable injuries and fatalities would continue to occur even if employers fully complied with the existing standards. Relative to full compliance with the existing standards, OSHA estimates, in Chapter 4 of this FEA, that full compliance with the final standard would prevent an estimated additional 780 injuries and 5.2 fatalities annually.

Executive Order 12866 provides that ''[e]ach agency shall identify the problem that it intends to address [via regulation] . . . including, where applicable, the failures of private markets.'' Executive Order 13563 reiterates that requirement. In the absence of this regulation, many construction employees would not know about or recognize the hazards that confined spaces, or the procedures to follow to protect against such hazards. Even those employees with years of experience in construction work may lack training on confined spaces, information about specific onsite confined-space hazards, equipment needed to monitor and ventilate confined spaces, or rescue procedures and equipment.

The final standard for confined spaces in construction addresses these problems. The benefits analysis presented in Chapter 4 of this FEA shows that many accidents are potentially preventable with better information on confined spaces and worksite conditions and the proper confined-space procedures and equipment. When employers provide confined-spaces training, that training may be incomplete or ineffective in the absence of a specific set of construction requirements addressing training for confined spaces.

To better understand the market failures that make this final rule necessary, OSHA examined the economic incentives that underlie employer decisions with respect to workplace safety and health. An employee typically accepts the risks associated with a particular job in return for two forms of compensation: (1) A wage premium for assuming that risk; and (2) expected compensation for damages in the event of occupational injury or illness. The rational profit-maximizing employer will make investments in workplace safety to reduce the level of risk to employees only if such expenditures result in at least an offsetting reduction in the employer's payouts of wage premiums for risk and compensation for damages. To the extent that the sum of the costs of wage premiums and compensation for damages accurately represent the total damages associated with workplace accidents, the rational employer will accordingly arrive at the socially optimal level of accident prevention from an economic efficiency viewpoint.

Consequently, the major possible sources of market failure, resulting in an ''under-provision'' of health and safety, would be either: (1) The existence of occupational accident costs borne neither by the employee nor by the employer, or (2) the wage premiums or compensation for damages are not fully responsive to changes in employer-specific workplace risk. Both cases apply here.

In the first case, there are some non-fatal occupational injury and illness costs incurred by neither the employer nor the employee. For instance, neither employers nor employees have a vested interest in Federal and State taxes that go unpaid as a result of an employee injury. Such taxes typically represent 15 percent (for Social Security alone) to 26 percent of the total value of the income loss to the employee (IRS, 2013; Urban Institute/Brookings, 2012).[28] Workers' compensation payments are not subject to Federal income or Social Security taxes (IRS, 2012), and many studies find that income losses not compensated by workers' compensation are significant (NASI, 2012).

In the second case, as discussed below, the costs employers pay in compensation for damages or wage premiums are not fully responsive to changes in employer-specific workplace risk. Accordingly, most employers cover compensation for injured employees

[28] The average Federal tax rate for 2009 for the middle quintile of household income was 11.1 percent (Urban Institute/Brookings, 2012).

through workers' compensation insurance. (Some very large employers may self-insure in some states.) States highly regulate premiums for workers'-compensation insurance and, generally, employ a combination of a class rating and an experience rating in deriving premiums (NCCI, 2013; Ashford, 2006). States base the class rating on the average risk for employees in the same occupations as those working for the employer. The basis of the experience rating is the employer's actual workers'-compensation claims over the past several years. States use class rating for almost all very small firms and some medium-sized firms. Very large firms use either experience rating, but it takes several years before their insurance premiums account fully for changes in their workplace safety performance. States assign many firms a combination of class and experience ratings.[29] As a result, most employers will not receive full or prompt reductions in their workers' reduced premiums for the expenditures they made to prevent workplace injuries, illnesses, and fatalities. From a societal perspective, the result is an insufficient level of worker protection.

Furthermore, workers' compensation covers only a small fraction of most estimates of the willingness to pay to prevent a fatality.[30] Additionally, workers' compensation payments do not fully compensate injuries in that workers' compensation provides no payments for pain and suffering, or losses other than lost wages or medical expenses associated with injuries. There is extensive evidence that workers' compensation does not even fully restore wages lost as a result of long-term disability (Ashford, 2006).

Having to pay wage premiums for risk is another economic incentive for employers to mitigate occupational risk. However, wage premiums do not respond strongly to variations in risk level due to information asymmetries. For an employer to have an adequate incentive to implement measures that will prevent workplace incidents, it is not sufficient that employees simply know that their work is dangerous, or even know quantitatively that their occupation has a specific risk. Employees must know the exact types, and the likely quantitative effects, of safety measures and systems used by their employers; have a reasonable expectation that their employer will continue to provide existing safety measures in the future; and be able to act on their knowledge of risk by readily changing workplaces or wage demands in response to differences in levels of risk.[31] OSHA believes that even skilled construction workers (including some workers injured in accidents preventable by the final rule who fall into that category) lack such detailed employer-specific knowledge, or the ability to act on it. Further, construction employees who typically work at a variety of different sites, including sites controlled by multiple employers, will find it particularly challenging to determine future risk levels, as these levels will vary from site to site.

In summary, OSHA believes that: (1) Neither employers nor employees absorb the full costs of occupational injuries and fatalities; and (2) wage premiums and workers'-compensation insurance are not sufficiently responsive to variations in risk to assure that employers will reduce risk to the socially optimal level. This final rule, therefore, is necessary to address market failures and insufficient levels of worker safety that result from externalities and information asymmetries.

OMB's Circular A–4 (OMB, 2003) states that ''a demonstration of compelling social purpose and the likelihood of effective action'' may provide the basis for a Federal regulation. The OSH Act provides a Congressional finding as to the compelling social need for assuring occupational safety. Congress declared that the purpose of the OSH Act is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.'' 29 U.S.C. 651(b). Further, by emphasizing ''every working man and woman,'' Congress expressed an interest in preventing unsafe workplaces to the extent feasible, not simply in assuring that, on average, workplaces are safe. Thus, while some employers are excessively cautious about risk, while others are insufficiently cautious, OSHA's concern needs to be with the insufficiently cautious employers.

3. Profile of Affected Industries

This chapter presents a profile of the industries affected by the final standard for confined spaces in construction. It includes, for each affected industry, estimates of the number of firms, establishments, and employees, as well as the estimated number of establishments affected annually by the final standard. It also includes the number and characteristics of entries into confined spaces covered by the final standard.

A preliminary profile of industries appeared in OSHA's Preliminary Economic Analysis (PEA) that accompanied the proposed standard (ID–002). For this final analysis, OSHA updated the profile to reflect the latest available data from the Bureau of Labor Statistics, the Bureau of the Census, the Internal Revenue Service, and other authoritative sources and to address public comments. In addition, the Agency organized the industries in this final analysis according to the North American Industry Classification System (NAICS) rather than the Standard Industry Classification (SIC) system used in the PEA. This was necessary because OSHA wished to update the analysis using more recent economic data and the more recent economic data uses the NAICS rather than the SIC system.

An analysis conducted by CONSAD Research Corporation under contract with OSHA served as the basis for the PEA (ID–003). The CONSAD report relied on a variety of sources, including information provided by a panel of construction industry safety experts in 1995 regarding characteristics of, and entries into, confined spaces for 25 categories of construction projects, as well as compliance rates for provisions of the proposed standard. CONSAD used F.W. Dodge data to estimate the number of construction-project starts for each project category, by size of project

One commenter, the Associated General Contractors of America (AGCA), presented an alternative economic analysis of the proposed rule, prepared by Dr. N. Mike Helvacian, based in part on a survey of AGCA's members (ID–222). That economic analysis suggested that the PEA omitted five affected industries, including, by NAICS code: 238210 (Electrical Contractors); 221119 (Utilities—Other Electric Power Generation); 221310 (Utilities—Water Supply Irrigation); 236118 (General Contractors in Residential Modeling); and 238220 (Plumbing, Heating and Air Conditioning Contractors). OSHA included these five industries, other than NAICS 221119 (Utilities—Other

[29] Premiums due to class rating, by definition, do not vary with an individual employer's injury experience. There is some empirical evidence, using a difference in differences methodology, showing that (small) firms that move from class rating to experience rating decrease their total claims by 8 to 12 percent (Neuhauser et al., 2013).

[30] While workers' compensation varies by state, Leigh and Marcin (2012) estimate that the average indemnity benefit for a fatality is $225,919, far less than willingness-to-pay estimates. For example, as explained in Chapter 4 of this FEA, OSHA uses a willingness-to-pay measure of $8.7 million per life saved in 2009 dollars. Other agencies use different estimates, but all the values are in the millions of dollars.

[31] Furthermore, bargaining power differences or external constraints must not interfere in the wage setting process as these factors do in circumstances such as monopsony or multiemployer collective-bargaining agreement.

Electric Power Generation), in the industry profile, and in the estimation of compliance costs, for the final standard.

For electric power-generation industries (NAICS 221111, NAICS 221112, and NAICS 221113, in addition to NAICS 221119, in the 2007 version of NAICS), OSHA believes that most of the confined-space entries performed are for maintenance and repair subject to General Industry requirements under §§ 1910.146 and 1910.269. When the size and scope of a project involving entry into confined spaces is large or complex enough that the work is construction work as defined in § 1910.12(b), electric utilities typically hire contractors in industries that are already included in this FEA to perform the work and confined-space entry. Consequently, OSHA concluded that employers in NAICS 221119 will themselves rarely, if ever, perform work covered by this final rule and, thus, will incur no direct costs or negligible direct costs to comply with the final standard. By the same reasoning, OSHA did not in the PEA, and did not in this FEA, include any other electric power-generation industries in its industry profile or in its estimation of compliance costs for the final standard.

Other commenters, including SBA Advocacy, pointed out that OSHA did not include single-family housing projects in the analysis of compliance costs in the PEA (see ID–119 and ID–219). In its original analysis, the Agency excluded single-family housing projects, in part because the previously mentioned panel of industry experts found that such projects did not have entries into confined spaces covered by the standard (see ID–003, p. 3.54). Comments in the record generally indicate that there are a limited number of confined-space entries in these projects. For example, the National Association of Home Builders (NAHB) noted that ''there is very limited exposure to confined space hazards in residential construction'' (ID–117). In a post-hearing brief, NAHB explained that ''although it will happen only occasionally, permit spaces may arise in residential home construction, perhaps when a subcontractor brings certain chemicals . . . into a confined space, such as into a crawl space, attic, or a basement before steps are installed'' (ID–219). OSHA agrees that, although entry into confined spaces to conduct work on home-building construction sites is rare, it cannot rule out some potential for exposure to confined-space hazards for this sector of the construction industry. Therefore, OSHA included single-family home construction projects in this analysis by adding NAICS code 236115, New Single-Family Housing Construction (except Operative Builders), to the scope of this FEA.

In addition, OSHA believes that some residential remodeling projects, such as an expansion of an apartment building or upgrading HVAC systems, plumbing, or electrical systems in multi-family housing, may constitute construction activity. Therefore, for this FEA, OSHA added costs for employers with confined spaces in residential remodeling projects to comply with the final standard.

Another commenter stated that the CONSAD report ''specifically excludes gas, water, sewer and municipal work from their analysis. It is erroneous for . . . the entire sewer construction industry to be excluded from the economic analysis'' (ID–091). OSHA points out that the PEA did not exclude the entire sewer-construction industry. Rather, the PEA excluded new water- and sewer-line construction projects because such work typically involves smaller lines and, therefore, does not typically involve entries covered by the rule. However, OSHA included entries into existing storm sewers, sanitary sewers, and sewer manholes for construction work, including entries involved in storm sewer and flood-control projects and sewer-, water-, and waste-treatment plants, both in the PEA and in this FEA. OSHA also discusses in the economic feasibility analysis the possibility that establishments in industries that seldom have confined space entries might occasionally have one.

OSHA concludes that the final standard will affect establishments in 15 six-digit NAICS codes. In particular, the standard will affect firms that perform construction work involving buildings, highways, bridges, tunnels, utility lines, and other types of projects. Also potentially affected by the final rule are general contractors, as well as specialty-trade construction contractors and property owners.

Table IV–2 provides information on the estimated number of projects for each type of construction activity, as well as the estimated number of entrants per entry, number of entries, and worker-entry hours in confined spaces. OSHA based this information on the estimates originally provided in the CONSAD report.

Table IV–3 presents profile data on the number of establishments, the number of employees, and revenues and profits for each affected industry sector. The Agency updated this table from the PEA using the more recent data from the 2007 Statistics of U.S. Businesses from the Census Bureau adjusted to 2009 dollars using the GDP deflator. This is the same source of data used in the PEA. These industries contain an estimated combined total of over 500,000 establishments and nearly 5 million employees. The annual combined revenues of these industries in 2007 came to nearly $1.3 trillion (in 2009 dollars). Commercial and Institutional Building Construction (NAICS 236220), the largest of these industries in terms of annual revenue, accounted for about $393 billion of this total. However, due to the type of the activity addressed by this rule, OSHA modeled only a small fraction of establishments in the affected industries as performing construction activities in confined spaces and bearing the associated compliance costs in a given year.[32]

OSHA updated the PEA estimates of before-tax profit rates in Table IV–3 using more recent corporate balance-sheet data from the Internal Revenue Service's *Corporation Source Book* (IRS, 2013). This is a more recent edition of the same source of data used in the PEA. For each of the years 2003 through 2007, the Agency calculated profit rates as the ratio of total receipts to net income by NAICS group, and averaged profit rates across the five-year period (2003–2007). Since some data provided by the IRS were not available at disaggregated levels for all industries and profit rates, OSHA used data at more highly aggregated levels as a proxy for such industries—that is, where data were not available for each six-digit NAICS code, OSHA used corresponding four- and five-digit NAICS codes, as appropriate.

Table IV–4 presents profile data for firms defined as small entities by the Small Business Administration (SBA),[33] and Table IV–5 presents profile data for very small entities, defined as firms with fewer than 20 employees. Table IV–6 presents OSHA's estimated compliance rates for key provisions of the final standard, which it discusses in Chapter 6 of this FEA. Table IV–7 presents the wage rates, in 2009 dollars, for the labor categories used in OSHA's cost analysis, while Table IV–14 in Chapter 6 of this FEA presents other unit-cost data used in the analysis.

[32] Only some construction projects involve entry into confined spaces.

[33] OSHA converted revenue cutoffs for small business designation to the closest employee number cutoffs so that it could apply available business census employment numbers.

TABLE IV–2—SUMMARY STATISTICS ON MODELED WORKER ENTRIES INTO CONFINED SPACES, BY TYPE OF CONSTRUCTION ACTIVITY AND PROJECT SIZE

Project category	Total number of projects	Total number of projects with confined spaces	Average number of confined spaces per project			Total number of confined spaces	Average number of workers in an entry team	Number of entries into confined spaces per project	Total entries into confined spaces, all projects	Number of worker entries into confined spaces per project	Total worker entries into confined spaces, all projects	Number of worker-hours in confined spaces per project	Total worker hours all projects [a]
			Existing	New	All								
Commercial and Public Buildings:													
Small Project	13,931	3,483	2	2	4	13,931	2	8	27,862	16	55,724	32	111,448
Medium Project	4,328	3,246	5	10	15	48,690	2	57	185,022	134	434,964	605	1,962,207
Large Project	852	724	5	10	15	10,863	2	57	41,279	134	97,043	605	437,779
Warehouses:													
Small Project	2,609	130	2	0	2	261	2	12	1,565	18	2,348	72	9,392
Medium Project	4,409	220	0	2	2	441	2	4	882	7	1,543	25	5,511
Large Project	462	23	0	2	2	46	2	4	92	7	162	25	578
Health Facilities and Laboratories:													
Small Project	2,332	117	5	0	5	583	2	29	3,381	77	8,978	294	34,310
Medium Project	4,419	442	4	4	8	3,535	2	13	5,745	22	9,722	65	28,724
Large Project	643	129	4	4	8	1,029	2	13	1,672	22	2,829	65	8,359
Detention Facilities:													
New Construction	163	147	1	14	15	2,201	2	43	6,308	90	13,203	87	12,763
Athletic and Entertainment Facilities:													
All Projects	1,378	69	1	6	7	482	2	24	1,654	46	3,169	66	4,547
Airline Terminals:													
New Construction	59	53	1	14	15	797	2	43	2,283	90	4,779	87	4,620
Aircraft Service:													
All Projects	295	30	0	5	5	148	2	36	1,062	72	2,124	19	551
Auto, Bus, and Truck Service:													
Small Renovation	10	2	0	2	2	4	1	2	4	2	4	3	6
Major Renovation	20	12	0	8	8	96	1	16	192	22	264	92	1,104
New Construction	87	87	0	18	18	1,566	1	46	4,002	77	6,699	362	31,494
Residential Housing:													
Small Project	1,004,721	25,118	0	1	1	25,118	1	3	612	3	612	3	612
Medium Project	3,204	801	0	2	2	1,602	2	6	4,806	10	8,010	14	11,214
Large Project	2,204	882	0	10	10	8,816	2	150	132,240	280	246,848	913	805,195
Apartments, Hotels, and Dormitories:													
All Projects	4,258	426	3	12	15	6,387	2	44	18,735	74	31,509	140	59,612
Streets and Highways:													
Repair Storm Drain/Sewer Local Street	11,893	1,784	4	5	9	16,056	2	17	30,327	29	51,735	113	202,181
Install New Storm Drain/Sewer System	8,325	2,914	10	7	17	49,534	2	321	935,314	544	1,585,080	2,764	8,053,119
Lane Expansion on Major Interstate	3,568	1,784	15	13	28	49,952	2	721	1,286,264	1,463	2,609,992	6,765	12,068,165
Bridges:													
Small Project	952	952	0	46	46	43,792	3	442	420,784	1,324	1,260,448	1,988	1,892,576
Medium Project	2,011	1,006	0	96	96	96,528	3	742	746,081	2,524	2,537,882	2,388	2,401,134
Large Project	808	404	0	196	196	79,184	3	1,342	542,168	4,924	1,989,296	3,188	1,287,952
Dams and Reservoirs:													
Small Project	208	10	1	1	1	10	2	2	21	4	42	32	333
Medium Project	468	164	2	0	2	328	4	40	6,552	160	26,208	640	104,832
Large Project	48	24	0	3	3	72	17	810	19,440	15,300	367,200	46,800	1,123,200
Storm Sewers and Flood Control:													
Small Project	2,489	2,489	21	2	23	57,247	1	26	64,714	26	64,714	80	198,290
Medium Project	350	350	0	59	59	20,650	1	437	152,950	460	161,000	598	209,300
Large Project	59	59	0	193	193	11,387	1	446	26,314	478	28,202	666	39,294
Sewer, Water, and Waste Treatment Plants:													
Small Renovation	2,310	578	4	20	24	13,860	1	69	39,848	88	50,820	280	161,411
Major Renovation	1,012	708	0	34	34	24,086	1	94	66,590	126	89,258	395	279,641
New Construction	1,179	1,179	0	58	58	68,382	2	163	192,177	229	269,991	743	875,408
Tanks:													
Minor Installation/Renovation (Small Contractor)	540	216	0	6	6	1,296	1	9	1,944	9	1,944	5	1,116
Minor Installation/Renovation (Medium Contractor)	294	176	0	9	9	1,588	1	139	24,520	163	28,753	340	59,888
New Construction/Major Renovation (Large Contractor)	147	118	0	11	11	1,294	4	389	45,746	1,421	167,110	5,364	630,748
Hydro-Electric Power Plants:													
Small Project	7	1	5	0	5	5	1	84	88	164	172	656	689
Medium Project	10	8	6	0	6	48	2	48	384	96	768	384	3,072
Large Project	1	1	18	0	18	16	3	433	390	1,012	911	4,048	3,643
Other Power Plants:													
Small Project	49	0	0	0	0	0	0	0	0	0	0	0	0
Medium Project	119	95	11	0	11	1,047	5	252	23,990	1,304	124,141	4,035	384,132
Large Project	92	87	7	0	7	612	18	604	52,790	3,590	313,766	15,880	1,387,912
Electric Substations:													
Small Project	34	31	2	1	3	92	2	22	673	44	1,346	176	5,386
Medium Project	107	102	4	3	7	712	2	138	14,028	276	28,055	1,104	112,222
Large Project	13	12	4	3	7	86	2	138	1,704	276	3,409	1,104	13,634

TABLE IV–2—SUMMARY STATISTICS ON MODELED WORKER ENTRIES INTO CONFINED SPACES, BY TYPE OF CONSTRUCTION ACTIVITY AND PROJECT SIZE—Continued

Project category	Total number of projects	Total number of projects with confined spaces	Average number of confined spaces per project			Total number of confined spaces	Average number of workers in an entry team	Number of entries into confined spaces per project	Total entries into confined spaces, all projects	Number of worker entries into confined spaces per project	Total worker entries into confined spaces, all projects	Number of worker-hours in confined spaces per project	Total worker hours all projects [a]
			Existing	New	All								
Natural Gas Plants:													
Small Upgrade	4	3	0	2	2	7	1	2	7	2	7	4	13
Major Renovation	4	3	0	8	8	27	12	64	218	768	2,611	4,608	15,667
New Construction	8	7	8	28	36	265	12	728	5,358	8,728	64,238	24,135	177,631
Space Facilities:													
Small Project	37	37	0	15	15	555	1	43	1,591	54	1,998	196	7,252
Medium Project	1	1	0	27	27	27	1	78	78	95	95	342	342
Large Project	1	1	0	44	44	44	1	126	126	152	152	572	572
Manufacturing Facilities:													
Major Renovation	1,204	0	0	0	0	0	0	0	n/a	0	n/a	0	n/a
New Construction	1,067	107	0	2	2	213	11	51	5,442	1,001	106,807	24,000	2,560,818

[a] Data in this column rounded to the nearest whole hour.
n/a = not applicable (no confined spaces in this category).
Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–3—PROFILE OF INDUSTRIES AFFECTED BY THE FINAL STANDARD ON CONFINED SPACES IN CONSTRUCTION

NAICS	Industry	Total number of firms in industry	Total number of establishments in industry	Total employment in industry	Estimated annual number of projects with confined spaces	Estimated number of establishments affected annually
221310	Water Supply and Irrigation Systems	3,579	4,068	33,017	66	65
236115	New Single-Family Housing Construction (except Operative Builders).	61,262	61,613	282,851	1,340	1,321
236116	New Multifamily Housing Construction (except Operative Builders).	4,319	4,373	46,634	1,482	883
236118	Residential Remodelers	99,592	99,791	355,134	13,542	9,602
236210	Industrial Building Construction	3,858	3,963	96,918	107	106
236220	Commercial and Institutional Building Construction.	41,282	42,369	670,043	9,021	6,408
237110	Water and Sewer Line and Related Structures Construction.	13,679	13,872	206,899	3,980	2,765
237130	Power and Communication Line and Related Structures Construction.	5,099	5,750	196,223	341	341
237310	Highway, Street, and Bridge Construction	10,953	11,746	323,289	8,843	4,275
237990	Other Heavy and Civil Engineering Construction.	5,200	5,392	91,545	1,598	965
238190	Other Foundation, Structure, and Building Exterior Contractors.	5,701	5,720	45,035	2,680	1,182
238210	Electrical Contractors and Other Wiring Installation Contractors.	79,011	80,172	825,169	2,680	2,680
238220	Plumbing, Heating, and Air-Conditioning Contractors.	99,374	100,806	1,012,541	2,935	2,934
238310	Drywall and Insulation Contractors	21,785	22,458	320,238	2,680	2,284
238910	Site Preparation Contractors	41,251	41,517	331,237	255	255
	Total	495,945	503,610	4,836,773	51,551	36,066

NAICS	Industry	Revenues ($ thousand)	Average revenues per firm ($ thousand)	Profit rate (percent)	Estimated profits ($ thousand)	Average profit per firm ($ thousand)
221310	Water Supply and Irrigation Systems	$7,999,900	$2,235	5.89	$471,431	$132
236115	New Single-Family Housing Construction (except Operative Builders).	103,600,723	1,691	4.53	4,692,648	77
236116	New Multifamily Housing Construction (except Operative Builders).	24,939,736	5,774	4.53	1,129,658	262
236118	Residential Remodelers	75,344,805	757	4.53	3,412,781	34
236210	Industrial Building Construction	26,486,027	6,865	4.53	1,199,698	311
236220	Commercial and Institutional Building Construction.	392,958,284	9,519	4.53	17,799,246	431
237110	Water and Sewer Line and Related Structures Construction.	51,808,802	3,787	5.98	3,099,719	227
237130	Power and Communication Line and Related Structures Construction.	35,528,777	6,968	5.98	2,125,685	417
237310	Highway, Street, and Bridge Construction	112,052,152	10,230	5.98	6,704,076	612
237990	Other Heavy and Civil Engineering Construction.	24,090,901	4,633	5.98	1,441,358	277
238190	Other Foundation, Structure, and Building Exterior Contractors.	7,085,701	1,243	4.58	324,258	57
238210	Electrical Contractors and Other Wiring Installation Contractors.	129,184,454	1,635	4.54	5,864,637	74
238220	Plumbing, Heating, and Air-Conditioning Contractors.	167,754,151	1,688	3.86	6,470,472	65
238310	Drywall and Insulation Projects	42,281,365	1,941	4.58	1,934,891	89
238910	Site Preparation Contractors	67,939,838	1,647	4.77	3,243,144	79
	Total	1,269,055,615	2,559	4.72	59,913,701	121

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–4—PROFILE OF SBA-DEFINED SMALL ENTITIES WITHIN INDUSTRIES AFFECTED BY THE FINAL STANDARD ON CONFINED SPACES IN CONSTRUCTION

NAICS	Industry	Total number of firms in industry-size grouping	Total number of establishments in industry-size grouping	Total employment in industry-size grouping	Estimated annual number of projects with confined spaces	Estimated number of establishments affected annually
221310	Water Supply and Irrigation Systems	3,579	4,068	33,017	66	18
236115	New Single-Family Housing Construction (except Operative Builders).	61,065	61,125	241,095	953	953
236116	New Multifamily Housing Construction (except Operative Builders).	4,208	4,218	31,694	828	728
236118	Residential Remodelers	99,571	99,657	347,579	12,848	9,468
236210	Industrial Building Construction	3,687	3,699	33,998	24	24
236220	Commercial and Institutional Building Construction.	40,279	40,424	415,362	4,463	4,463
237110	Water and Sewer Line and Related Structures Construction.	13,348	13,379	140,854	2,272	2,272
237130	Power and Communication Line and Related Structures Construction.	5,012	5,121	84,488	112	112
237310	Highway, Street, and Bridge Construction	10,205	10,255	134,875	2,784	2,784
237990	Other Heavy and Civil Engineering Construction.	5,001	5,011	45,364	584	584
238190	Other Foundation, Structure, and Building Exterior Contractors.	5,638	5,650	35,003	1,763	1,112
238210	Electrical Contractors and Other Wiring Installation Contractors.	77,933	78,115	558,977	1,446	1,446
238220	Plumbing, Heating, and Air-Conditioning Contractors.	98,267	98,468	727,726	1,722	1,722
238310	Drywall and Insulation Projects	21,264	21,304	176,689	1,130	1,130
238910	Site Preparation Contractors	40,840	40,900	257,517	169	169
	Total	489,841	496,340	3,247,574	31,116	26,985

NAICS	Industry	Revenues ($ Thousand)	Average revenues per firm ($ Thousand)	Profit rate (%)	Estimated profits ($ Thousand)	Average profit per firm ($ Thousand)
221310	Water Supply and Irrigation Systems	$2,510,882	$713	5.89	$147,965	$ 42
236115	New Single-Family Housing Construction (except Operative Builders).	76,651,638	1,255	4.53	3,471,975	57
236116	New Multifamily Housing Construction (except Operative Builders).	15,147,671	3,600	4.53	686,122	163
236118	Residential Remodelers	73,283,645	736	4.53	3,319,420	33
236210	Industrial Building Construction	10,421,351	2,827	4.53	472,040	128
236220	Commercial and Institutional Building Construction.	199,388,653	4,950	4.53	9,031,411	224
237110	Water and Sewer Line and Related Structures Construction.	32,860,609	2,462	5.98	1,966,049	147
237130	Power and Communication Line and Related Structures Construction.	15,098,169	3,012	5.98	903,323	180
237310	Highway, Street, and Bridge Construction	43,921,533	4,304	5.98	2,627,824	258
237990	Other Heavy and Civil Engineering Construction.	10,427,684	2,085	5.98	623,888	125
238190	Other Foundation, Structure, and Building Exterior Contractors.	5,277,635	936	4.58	241,517	43
238210	Electrical Contractors and Other Wiring Installation Contractors.	80,826,690	1,037	4.54	3,669,320	47
238220	Plumbing, Heating, and Air-Conditioning Contractors.	111,089,247	1,130	3.86	4,284,841	44
238310	Drywall and Insulation Contractors	23,969,602	1,127	4.58	1,096,903	52
238910	Site Preparation Contractors	49,943,011	1,223	4.77	2,384,056	58
	Total	750,818,022	1,533	4.74	35,447,057	72

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–5—PROFILE OF VERY SMALL ENTITIES (FEWER THAN 20 EMPLOYEES) WITHIN INDUSTRIES AFFECTED BY THE FINAL STANDARD ON CONFINED SPACES IN CONSTRUCTION

NAICS	Industry	Total number of firms in industry-size grouping	Total number of establishments in industry-size grouping	Total employment in industry-size grouping	Estimated annual number of projects with confined spaces	Estimated number of establishments affected annually
221310	Water Supply and Irrigation Systems	3,413	3,428	12,676	11	11
236115	New Single-Family Housing Construction (except Operative Builders).	59,376	59,385	185,153	580	580
236116	New Multifamily Housing Construction (except Operative Builders).	3,760	3,761	15,035	271	271
236118	Residential Remodelers	97,291	97,294	258,012	7,105	7,105
236210	Industrial Building Construction	3,225	3,227	16,136	8	8
236220	Commercial and Institutional Building Construction.	33,977	33,992	174,975	1,329	1,329
237110	Water and Sewer Line and Related Structures Construction.	11,242	11,242	57,685	642	642
237130	Power and Communication Line and Related Structures Construction.	3,973	3,976	21,403	17	17
237310	Highway, Street, and Bridge Construction	8,011	8,014	42,634	601	601
237990	Other Heavy and Civil Engineering Construction.	4,321	4,323	18,871	166	166
238190	Other Foundation, Structure, and Building Exterior Contractors.	5,244	5,244	19,607	706	706
238210	Electrical Contractors and Other Wiring Installation Contractors.	71,144	71,156	297,375	544	544
238220	Plumbing, Heating, and Air-Conditioning Contractors.	89,245	89,255	388,409	655	655
238310	Drywall and Insulation Projects	18,832	18,837	77,284	336	336
238910	Site Preparation Contractors	37,690	37,691	139,196	64	64
	Total	450,744	450,825	1,724,451	13,035	13,032

NAICS	Industry	Revenues ($ Thousand)	Average revenues per firm ($ Thousand)	Profit rate (percent)	Estimated profits ($ Thousand)	Average profit per firm ($ Thousand)
221310	Water Supply and Irrigation Systems	$1,814,859	$532	5.89	$106,949	$31
236115	New Single-Family Housing Construction (except Operative Builders).	58,016,827	977	4.53	2,627,902	44
236116	New Multifamily Housing Construction (except Operative Builders).	6,202,571	1,650	4.53	280,949	75
236118	Residential Remodelers	53,069,089	545	4.53	2,403,792	25
236210	Industrial Building Construction	4,744,855	1,471	4.53	214,921	67
236220	Commercial and Institutional Building Construction.	77,231,171	2,273	4.53	3,498,225	103
237110	Water and Sewer Line and Related Structures Construction.	12,423,307	1,105	5.98	743,286	66
237130	Power and Communication Line and Related Structures Construction.	3,755,169	945	5.98	224,672	57
237310	Highway, Street, and Bridge Construction	14,530,558	1,814	5.98	869,363	109
237990	Other Heavy and Civil Engineering Construction.	4,349,517	1,007	5.98	260,231	60
238190	Other Foundation, Structure, and Building Exterior Contractors.	2,892,942	552	4.58	132,388	25
238210	Electrical Contractors and Other Wiring Installation Contractors.	40,914,727	575	4.54	1,857,422	26
238220	Plumbing, Heating, and Air-Conditioning Contractors.	55,526,805	622	3.86	2,141,733	24
238310	Drywall and Insulation Projects	11,280,100	599	4.58	516,203	27
238910	Site Preparation Contractors	25,679,366	681	4.77	1,225,818	33
	Total	372,431,864	826	4.72	17,582,974	39

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–6—ESTIMATED COMPLIANCE RATES FOR CONSTRUCTION PROJECTS AFFECTED BY OSHA'S FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION

[By project category]

Project category	Entrant training (a) (percent)	Information exchange (percent)	Written programs (and formal annual review) (percent)	Classify spaces and issue permits (percent)	Lockout/ tagout (percent)	Mechanical ventilation (percent)	Attendants (percent)	Rescue capability (percent)
Commercial and Public Buildings:								
Small Project	65	75	50	83	83	86	83	N/A
Medium Project	83	75	70	93	86	90	86	79
Large Project	86	80	80	97	93	93	93	86
Warehouses:								
Small Project	62	50	50	69	65	48	100	N/A
Medium Project	62	50	50	69	86	48	100	N/A
Large Project	62	50	50	69	86	48	100	N/A
Health Facilities and Laboratories:								
Small Project	58	65	25	58	58	58	100	N/A
Medium Project	58	65	25	58	58	58	100	N/A
Large Project	58	65	25	58	58	58	100	N/A
Detention Facilities:								
New Construction	100	20	0	45	N/A	93	65	86
Athletic and Entertainment Facilities:								
All Projects	33	75	20	47	37	47	N/A	N/A
Airline Terminals:								
New Construction	100	20	0	45	N/A	93	65	86
Aircraft Service:								
All Projects	34	75	20	48	N/A	48	N/A	N/A
Auto, Bus, and Truck Service:								
Small Renovation	38	20	10	65	N/A	31	N/A	72
Major Renovation	38	20	10	65	N/A	31	N/A	72
New Construction	100	80	80	65	N/A	100	N/A	N/A
Residential Housing:								
Small Project	38	0	0	31	45	83	93	N/A
Medium Project	45	5	0	45	58	83	93	N/A
Large Project	65	30	10	72	83	83	93	N/A
Apartments, Hotels, and Dormitories:								
All Projects	38	75	20	51	41	51	N/A	N/A
Streets and Highways:								
Repair Storm Drain/Sewer-Local Street	82	80	75	96	96	94	97	97
Install New Storm Drain/Sewer System	89	85	85	96	98	96	98	98
Lane Expansion on Major Interstate	93	90	90	96	99	96	99	99
Bridges:								
Small Project	82	0	5	100	N/A	100	100	100
Medium Project	82	0	80	100	N/A	100	100	100
Large Project	82	5	5	100	N/A	100	100	100
Dams and Reservoirs:								
Small Project	52	50	60	72	68	52	100	100
Medium Project	72	50	70	84	76	60	100	N/A
Large Project	88	95	100	100	N/A	100	100	N/A
Storm Sewers and Flood Control:								
Small Project	63	50	50	100	N/A	56	N/A	N/A
Medium Project	93	80	80	100	N/A	100	N/A	N/A
Large Project	93	80	80	100	N/A	100	N/A	N/A
Sewer, Water, and Waste Treatment Plants:								
Small Renovation	63	50	30	93	N/A	63	N/A	85
Major Renovation	63	50	30	93	N/A	63	N/A	85
New Construction	63	50	30	93	N/A	63	N/A	85
Tanks:								
Minor Installation/Renovation (Small Contractor)	60	45	40	85	64	71	67	71
Minor Installation/Renovation (Medium Contractor)	71	60	60	93	71	78	82	78
New Construction/Major Renovation (Large Contractor)	85	80	80	96	82	85	89	85
Hydroelectric Power Plants:								
Small Project	64	90	95	96	100	71	86	N/A
Medium Project	82	95	100	100	N/A	78	100	N/A
Large Project	89	95	100	100	N/A	86	100	N/A
Other Power Plants:								
Medium Project	70	95	80	85	N/A	78	78	74
Large Project	96	95	95	100	N/A	96	100	96
Electric Substations:								
Small Project	96	95	95	96	N/A	96	96	96
Medium Project	96	95	95	96	N/A	96	96	96
Large Project	96	95	95	96	N/A	96	96	96
Natural Gas Plants:								
Small Upgrade	55	40	40	93	100	78	55	55
Major Renovation	70	60	50	100	100	93	N/A	N/A
New Construction	93	90	90	100	N/A	93	100	100
Space Facilities:								
Small Project	93	90	90	100	N/A	93	N/A	N/A

TABLE IV–6—ESTIMATED COMPLIANCE RATES FOR CONSTRUCTION PROJECTS AFFECTED BY OSHA'S FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION—Continued

[By project category]

Project category	Entrant training (a) (percent)	Information exchange (percent)	Written programs (and formal annual review) (percent)	Classify spaces and issue permits (percent)	Lockout/ tagout (percent)	Mechanical ventilation (percent)	Attendants (percent)	Rescue capability (percent)
Medium Project	93	90	90	100	N/A	93	N/A	N/A
Large Project	93	90	90	100	N/A	93	N/A	N/A
Manufacturing Facilities:								
New Construction	43	50	50	86	N/A	65	43	43

(a) Current compliance rates for attendant training are nearly identical to the rates for entry training, but may be somewhat lower for some project categories based on estimates provided by CONSAD's 1995 industry expert panel. See CONSAD report (2005) for details.

N/A = Not Applicable (treated as "0%" in calculations).

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–7—LOADED HOURLY LABOR RATES APPLIED IN OSHA'S COST ANALYSIS OF THE FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION

[2009 dollars]

Labor category	Wage rate
Construction supervisor	$42.16
Skilled worker	29.60
General construction employee	24.93
Clerical employee	22.53
Unskilled worker	22.67

Source: Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety, based on data from Bureau of Labor Statistics 2009 Occupational Employment Statistics (OES) Survey.

4. Benefits and Net Benefits

Introduction

The final standard will improve the safety of workers who encounter confined spaces in construction. Confined spaces represent special safety problems because it can be difficult to exit them and it may be difficult to provide aid if an incident occurs in a confined space. There are also certain types of hazards, such as low oxygen levels, accumulations of dangerous gases, and engulfment by water that are particularly likely to be found in confined spaces. As a result, OSHA developed a programmatic approach to assure the safety of workers who must work in the vicinity of confined spaces. This programmatic approach includes provisions for identifying confined spaces and the hazards they may contain; removing the hazards if possible; restricting entry through a permit system where employers cannot remove the hazard; providing appropriate testing and equipment when employees must enter a space; providing for attendants; and arranging for rescue services when emergencies occur in a confined space.

Independent researchers found that a similar system in general industry significantly reduced confined-spaces incidents (Seong and Mendeloff, Assessing the Accuracy of OSHA's Projections of the benefits of New Safety Standards, 2004). The Seong and Mendeloff paper estimates at least a fifty percent reduction in total deaths in two BLS fatality categories: ''inhalation in enclosed, restricted, or confined spaces,'' and ''depletion of oxygen in enclosed, restricted, or confined spaces,'' following the implementation of the general industry rule. These two categories would include a number of kinds of events not covered by the general industry confined space standard, such as inhalation of toxic substances in a room (for example, there are some fatalities every year from using paint or paint strippers in ordinary rooms not adequately ventilated for the purposes of heavy chemical use that nevertheless would not be confined spaces). These kinds of events would be included in the denominator of Seong and Mendeloff analysis but would not be affected by the general industry confined space rule. The Seong and Mendeloff analysis does not attempt to determine if the incidents included in its analysis occurred in a confined space, much less whether the confined spaces rule was being followed. OSHA believes that most of the remaining confined space incidents in general industry are the result of failure to follow that standard. Compliance with the provisions of this standard will reduce accidents, injuries, and fatalities in confined spaces in construction. In particular, the number of injuries and fatalities from causes such as asphyxiation, lethal gas, chemical burns, explosions, drowning, and failed rescue attempts will decline.

For the Preliminary Economic Analysis (PEA), OSHA developed estimates of the benefits associated with the proposed standard by estimating the numbers of fatalities and injuries likely prevented by full compliance, and then applied monetary values to them. Table IV–8 shows the Agency's estimate of the annualized monetary benefits associated with the final standard. The remainder of this section details OSHA's methodology for estimating those benefits.

TABLE IV–8—ESTIMATED VALUE OF ANNUALIZED BENEFITS *

Benefits	Number	Monetized value
Fatalities Avoided.	5.2	$45.2 million. [a]
Injuries Avoided	780	$48.4 million. [b]
Total	.....	$93.6 million.

* In 2009 dollars.

[a] Based on an estimated value of $8.7 million per fatality avoided.

[b] Based on an estimated value of $62,000 per injury avoided.

Estimation of Prevented Fatalities

In the analysis CONSAD Research Corporation (CONSAD) submitted to OSHA and which OSHA reviewed and approved for use in the PEA, the CONSAD researchers used OSHA's Integrated Management Information System (IMIS) and the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries (CFOI) to develop the estimated safety benefits or the number of fatalities and injuries potentially avoided as a result of this standard. Using these sources, CONSAD gathered data on the number of fatal and non-fatal construction-related accidents involving the entry of a confined space by applying a search criterion relevant to both confined spaces and construction work. For data collected from the IMIS database, CONSAD searched for accident reports with construction industry SIC codes of 15, 16, and 17, and then manually reviewed those reports and the narratives of the accidents for factors indicative of an enclosed or confined space-related injury. Such factors included specific

types of environmental hazards, certain events and human errors, as well as the type and source of an injury (see Section 4.1.1 of the CONSAD Report for a detailed list of the factors; Docket ID: OSHA–2007–0026–0003). Outside of the search criteria, CONSAD also reviewed incident reports where the Agency cited employers for violations of other OSHA standards involving constructions hazards similar to those hazards found in confined spaces; however, OSHA assured that the analysis excluded any cases involving a confined-space entry or cases largely involving work activity covered by OSHA standards—subpart P, subpart S, subpart V or any General Industry standard.

For data collected from CFOI, BLS provided CONSAD with a research data file, procured under a confidentiality agreement, which contained detailed information about work-related fatalities such as employee occupation, industry, worker activity, the type and source of the injury, the event, the location of the accident, as well as a narrative description as to how the injury occurred. CONSAD used the BLS *Confined Space Fatality Study—1992* (BLS, 1992b) as a reference guide for developing the screening criteria used to identify fatal confined-space accidents in the CFOI file since the BLS study also used CFOI data and defined a confined space similar to OSHA's General Industry confined-spaces standard. Figure 4.1 of the CONSAD Report shows a detailed list of the factors used to screen the CFOI data file for confined-space accidents. Like the data used from the IMIS database, CONSAD manually reviewed each CFOI record and eliminated any accident that did not involve a confined space or that involved work activity covered by another OSHA standard.

From the IMIS database, CONSAD reviewed fatality and injury cases that occurred during the period of April 1984 to October 2001, and identified a total of 102 accidents related to confined spaces in construction. These accidents resulted in 84 fatalities and 88 injuries. The complete list of these accidents, along with their narratives, is available in Appendix C.1 of the CONSAD Report. Since the CFOI program did not begin collecting work-related fatality data from all 50 states and the District of Columbia until 1992, any data prior to 1992 was incomplete and, therefore, eliminated from further analysis. As a result, CONSAD only reviewed cases from the CFOI research data file that occurred during the period of 1992 to 2000, identifying a total of 21 accidents related to confined spaces in construction that resulted in a total of 24 fatalities. Due to the confidentiality agreement made between CONSAD and BLS, the details of these cases were not made available for public viewing. In an effort to be consistent with the data-collection process used with the CFOI data, CONSAD limited its analysis of the IMIS fatality and injury data to the period of 1992 to 2000. Using this constraint, the IMIS data yielded a total of 44 accidents related to confined spaces in construction that resulted in 34 fatalities and 39 injuries. Collectively from these two data sources, CONSAD was able to identify a total of 65 accidents related to confined spaces in construction during the period of 1992 to 2000 in which 58 fatalities and 39 injuries occurred.[34]

For the PEA, OSHA used the 58 selected fatalities from the 9-year period of 1992 to 2000 as a baseline to develop an estimate of the number of fatalities and injuries that this standard would potentially prevent. At that time, OSHA estimated that there was an average of 6.44 [35] confined-spaces-in-construction fatalities per year. In Section 4.3 of the CONSAD Report, CONSAD, with the assistance of its safety professional, did a further analysis of the fatality data used to estimate the safety benefits in the PEA and developed a methodology for determining the likelihood of preventing an accident with full compliance with the provisions of this standard. Using the expertise of CONSAD's safety engineer, CONSAD assigned each accident used in the analysis a ranking of 1 to 4, with 1 meaning that it was highly unlikely that the standard would prevent the victim's fatality or injury, and 4 meaning that is was highly likely that the standard would prevent the victim's fatality or injury. CONSAD then translated these rankings into probabilities that the standard would prevent each fatality or injury, using percentages of 5 percent for a ranking of 1, 35 percent for a ranking of 2, 65 percent for a ranking of 3, and 95 percent for a ranking of 4.[36] CONSAD subsequently aggregated the data and drew the conclusion that full compliance with the standard would prevent, on average, 91 percent of the fatalities and injuries.[37] OSHA reviewed and approved the CONSAD analysis and applied this probability prevention rate to the fatality estimate of 6.44 fatalities per year, and estimated in the PEA that full compliance with the provisions of this standard would prevent an estimated 5.9 (rounded to 6) confined-spaces-in-construction fatalities per year.

One commenter, Associated General Contractors of America (AGCA), commissioned a report by Dr. N. Mike Helvacian (ID–222) that made several criticisms of the methodology for estimating prevented fatalities and injuries in the PEA. The report characterized the approach to assigning prevention probabilities to accidents as ''a subjective assessment that cannot be reproduced by other safety professionals'' (p. 57). Another commenter stated that there was no basis for the estimate that full compliance with the final standard would eliminate 90 percent of fatalities and injuries (ID–100).

In light of such comments, as well as other comments received on the proposed rule and the PEA, OSHA reevaluated the original fatalities used to develop the benefits estimates and revised its values accordingly, as shown in Table IV–8. Based on the IMIS data, the CONSAD analysis showed 44 accidents during the period of 1992 to 2000 (listed in Appendix C.1 of the CONSAD Report, beginning at CONSAD Accident Number 57 and ending with CONSAD Accident Number 100), of which 34 fatalities and 39 injuries were reported.[38] Of those 44 accidents, 27 of them included fatalities listed, along with their narratives, in Table IV–9 below.[39]

Due to a confidentiality agreement made with the Bureau of Labor Statistics, OSHA did not include details

[34] While there is overlap between fatalities and injuries reported in OSHA IMIS and BLS CFOI, using information such as date, time, place, and names of affected individuals and firms allowed the contractor to find the unique incidents reported in each database.

[35] A commenter stated that ''it is unknown and not reported how OSHA has determined these figures. Practically, it is unknown how there could be a .44 fatality'' (ID–0100). OSHA notes that the estimated number of preventable fatalities can take on decimal values since it is an average value.

[36] CONSAD estimated a maximum effectiveness in preventing fatalities of 95 percent because the researchers believed that even a reasonable effort at compliance would not result in perfect compliance. OSHA believes that this percentage is very conservative as the standard has multiple layers of protection that assure that even fail to comply with some requirements, there are further protections to preventing fatalities and for reducing fatalities to injuries. The standard is unlikely to prevent any fatalities only when the employer completely fails to identify a space as a confined space and, thus, fails to take any of the appropriate measures. However, if there is a complete failure to identify a confined space, the employer will incur no costs.

[37] Thus, the vast majority of the accidents had a rating of 4 and a 95 percent probability of prevention.

[38] Note that an accident could involve several workers, with some injured and some killed.

[39] Table IV–9 only provides the narratives of the fatalities (with injuries omitted) shown in Appendix C.1 of the CONSAD Report; the CONSAD accident number listed for each accident in the table refers to the location of the narrative for that accident in the report.

of the accidents gathered from the CFOI database in the PEA or this FEA. However, the CONSAD report provides a detailed description of the methodology used to collect construction-related accidents involving confined-space entries from the CFOI database; OSHA made this description available for public viewing and commenting in the docket under Docket ID: OSHA–2007–0026–003.

OSHA still believes that CONSAD's analysis of the number of accidents that would be prevented by the standard given full compliance is reasonable. First, no existing standard provides a comprehensive approach to confined spaces in construction. There is an existing construction standard requiring employers to train employees in confined-space hazards. However, this existing standard does not specify what constitutes a confined space, nor does it specify the contents of the training that would serve to prevent fatalities or injuries due to confined-space hazards. There are also rules governing specific hazards, such as immediately dangerous to life and health (IDLH) atmospheres and hazardous gases, but OSHA did not adapt these rules to the specific circumstances of confined spaces; therefore, these rules are unlikely to provide adequate protection to workers when they encounter the hazards within a confined space. As demonstrated by the number of fatalities and injuries between 1992 and 2000, and confirmed by the supplemental data indicating that the fatalities and injuries continued to mount in more recent years, the existing rules have not been effective in preventing confined-space fatalities in construction. OSHA shares the belief of the ACCSH, as well as the other industry representatives who recommended that OSHA conduct this rulemaking, that a rule specific to confined spaces in construction could prevent these fatalities in a way that existing rules do not.

Table IV–9 shows fatalities occurring as a result largely of atmospheric hazards—either insufficient oxygen or the presence of lethal gases, particularly carbon monoxide or hydrogen sulfide—all of which this standard would prevent. This standard also could prevent fatalities that resulted from construction-related explosions or fires. In addition, a number of the fatalities were the result of would-be rescuers entering a confined space to assist another employee and succumbing to the same hazard, a result this standard would prevent.

Perfect compliance with the final standard would prevent all of these fatalities in several ways. First, identification of confined spaces would trigger the need for analysis and testing for possible hazards, as well as restrictions to prevent unauthorized entry. To the extent employers find hazards but cannot remove them, a system of controls would go into place. This system would prevent casual entry into confined spaces, such as occurred in CONSAD accident number 76 and entry by an employee working alone as occurred in the accidents with CONSAD accident numbers 72 and 84.[40] When entry was necessary, there would need to be appropriate and continuous testing, and employers would have to install ventilation to remove the atmospheric, or explosion and fire, hazards, or provide appropriate PPE. Better data sharing also may prevent some accidents, such as accident number 92. These factors would prevent most fatalities resulting from to atmospheric or explosion hazards.

To the extent these measures failed, the final standard also includes provisions for rescue, and prohibitions against unauthorized rescue entries. Rescue provisions may not prevent all fatalities that result from hazards such as explosions, but they can be crucial when atmospheric hazards are present. Adequate rescue might prevent fatalities that do not result in instant death. For example, quick withdrawal of workers from an explosive atmosphere or workers suffering from asphyxiation (followed by adequate first-aid measures) could prevent many fatalities. The rescue provisions would also prevent fatalities due to entry of inadequately equipped rescuers, either by removing the need for entry (providing non-entry rescue capability) or by assuring that the rescuers have adequate equipment for entry. Such rescue-related fatalities occurred in accidents 72, 84, and 97, and nearly occurred in several other accidents such as accident number 92.

In addition to atmospheric hazards, Table IV–9 shows a few other types of hazards. These include drowning and physical hazards such as dislodged plugs. The provisions for upstream-warning systems might prevent some of these drownings. Several of the accidents involved physical hazards posed by pipe plugs (or exposure to the physical hazards only temporarily restrained by the pipe plug); the requirements in the final standard to remove or isolate physical hazards through physical barriers or other means, rather than temporarily controlling the physical hazards, would eliminate employee exposure to such hazards during a confined-space entry and prevent some of these drownings. For example, having water bypass an area, rather than relying on a plug to hold the water, would prevent some of these accidents. The ability to quickly remove an injured employee with a retrieval line would also prevent a fatal accident in some cases. In many cases, better hazard awareness, compliance with permit-program requirements that prohibit entry when hazards are present, and the use of retrieval lines and other rescue procedures would make a difference.

Based on this review, OSHA believes that CONSAD's estimate that the standard would prevent 91 percent of the confined-space fatalities in their database seems reasonable. In almost all cases, multiple provisions would, if fully followed, completely prevent the fatalities. However, this estimate is in some senses a maximum estimate of the effectiveness of the standard. The estimate assumes full compliance, and OSHA's experience in general industry shows that perfect compliance with a similar standard was not achieved.[41] It is also possible, though none of the accidents examined illustrate this phenomenon, that an employer might have confined space incident even when in compliance with the standard due to an unanticipated equipment failure (such as an air hose developing leaks) or gross human error (such as an attendant falling asleep). However, not a single incident OSHA has examined occurred in a situation in which an employer was in compliance with the provisions of the standard.

In this Final Economic Analysis (FEA), OSHA revised its estimates with the same methodology used in the PEA, but also added supplementary data (*i.e.,* Table IV–10, described later in this section) whereby the Agency used new data to address a commenter's point and to confirm the continuing validity of the original data.

Several commenters questioned generally whether OSHA properly included the accidents used to estimate benefits in the PEA, but did not point

[40] Hereafter, this discussion will refer to all incidents by their CONSAD accident numbers.

[41] Seong and Mendeloff (2004) have found that past OSHA safety regulations' effectiveness at reducing occupational hazard-related mortality has been substantially lower than estimated by OSHA. It should be noted that (1) OSHA is forecasting effectiveness with full compliance and Seong and Mendeloff measured effectiveness given actual compliance, and (2) OSHA uses a fundamentally different approach to estimating benefits to this (and most other) safety standards than was used in the analyses the Seong and Mendeloff study reviewed. Nevertheless, this study potentially provides empirical support for the characterization of 91 percent as an upper bound in terms of the benefits that will actually be realized.

to any specific accidents that they would remove from the list of IMIS fatalities provided in the public record for this rulemaking. One of these commenters, the Associated General Contractors of Texas—Highway, Heavy, Utilities and Industrial Branch (AGCT), stated that OSHA did not specify the industry sectors in which the fatalities and injuries occurred (ID–0124).

AGCT also asserted that ''most potential exposures to confined space hazards in the construction industry occur in connection with excavation operations,'' and that other standards adequately address these hazards (ID–124). Another commenter stated that the PEA included accidents in trenches, while the proposed standard excluded trenching work (ID–035). In response, OSHA notes that the proposed standard did not apply to non-sewer construction work regulated by 29 CFR part 1926, subpart P—Excavations. However, the proposed standard applied to sewer work that fell under subpart P and, therefore, the inclusion of some accidents in trenches was consistent with the scope of the proposed rule. Final § 1926.1201(b) eliminates the distinction between non-sewer construction work and other construction work; the final standard clearly states that it does not apply to work regulated by 29 CFR part 1926, subpart P. As a result, the FEA does not include the costs and benefits associated with accidents occurring in trench-related activities unless they also involve confined spaces other than the trench (*e.g.,* a pipe placed inside the trench).

In addition, AGCT asserted, without support, ''Most sewer related fatalities involve municipal workers who are not covered by OSHA standards'' and expressed concern that it would be unfair and improper for OSHA to include benefits to municipal workers not covered by OSHA standards (ID–124). AGCT did not, however, point to any examples in the IMIS fatality data on the record that involved municipal workers. OSHA reexamined the 1992–2000 IMIS data and did not find any indication that these examples involved fatalities of municipal workers. Moreover, while AGCT's assertion may hold true with respect to the normal maintenance activities in sewers typically performed by municipal workers, AGCT did not distinguish in its comments between municipal-worker fatalities resulting from sewer work performed as part of construction and normal maintenance activities. To the contrary, it is OSHA's understanding that private contractors perform most sewer-construction activities.

Another commenter, Edison Electric Institute, stated that the analysis did not explain the basis for determining how the included accidents involved construction work, and that the analysis should exclude ''public sector'' work (ID–210, Tr. pp. 98–100). OSHA limited the accidents that served as the basis of the benefits analysis in the PEA to construction work based on the industry code of the employer of the worker involved in the accident. The final standard covers employers subject to OSHA enforcement authority and engaged in construction activity not covered by 29 CFR part 1926, subparts Y—Commercial Driving Operations, P—Excavations, or S—Underground Construction, Caissons, Cofferdams, and Compressed Air, so the final standard covers ''public sector'' work only to the extent that such work is within OSHA's enforcement authority. To the extent that ''public sector'' work means work conducted by municipal employees, OSHA refers to its response in the previous paragraph.

In response to these criticisms, OSHA reviewed the fatalities in the CONSAD IMIS database with respect to the issue of whether a construction standard would cover those accidents. First, the standard would cover municipal workers in state-plan states. However, there is not a single instance in Table IV–9 that identifies a municipal worker as a fatality. As CONSAD reported, all fatalities were for firms in a construction SIC code, and not for firms in a local government SIC code. Some commenters may believe, incorrectly, that contracted construction work funded by a municipality in a non-state plan state is not subject to OSHA standards; if the work involves an employee of a private-sector employer, that employer is subject to OSHA standards regardless of whether or not a local government funds the work.

OSHA then examined whether the general industry standard or any other OSHA standards covered the fatalities. It is difficult to determine coverage from the IMIS descriptions alone, so OSHA examined what standards it cited at the time of the fatality investigation. Even this approach may be unreliable because there may be a citation for a violation associated with a fatality inspection that did not involve a violation that directly contributed to the fatality. OSHA found that only two fatality accidents (89 and 99) had any citations under general industry standards. Absent a clear indication of a causal link between the general industry work cited and the fatality, OSHA is reluctant to remove these accidents. Moreover, even if these fatalities were the result of general industry activity, OSHA believes that it should include these two fatalities as prevented by the construction standard because it is possible that the employer believed the activities constituted construction work and, therefore, not covered by the general industry standard. With the promulgation of this final rule, it will now be clear that all confined spaces are subject to an OSHA standard, and that similar precautions apply to these spaces.

With respect to excavations, OSHA found only three accidents in which it cited the excavation standard (66, 80, and 86). However, OSHA believes that in all three cases, the fatality occurred in a confined space. The accident investigator identified the worksite in Accident 66 as a confined space. Accident 80 describes an entry into a manhole, which normally means a confined space. Accident 86 describes the activities as ''finish up work,'' implying the excavation phase of the project was complete when the accident occurred.

Several of the accidents involved underground activities, so OSHA examined the accidents for citations to subpart S, OSHA's underground construction standards. OSHA did not find any such citations and, therefore, did not exclude any accidents on that basis.

As a result of the decision, discussed in the cost analysis in this FEA, to exclude costs in state-plan states that adopted some provisions of a confined-spaces standard for construction, OSHA examined whether any of the fatalities involved citations to a state confined-spaces-in-construction standard. OSHA found two such cases—Accidents 67 and 82. Accident 67 occurred in Alaska, which has a comprehensive confined-space-in-construction standard that included almost all of the provisions in this final confined-space standard. OSHA decided not to include this fatality in the list of fatalities that this standard would prevent given full compliance with the rule. Accident 82, however, occurred in a state that required only mechanical ventilation of confined spaces, and no other provisions of this OSHA standard. OSHA believes that a full confined-space program compliant with this standard would prevent this accident, while a simple ventilation requirement would not.

TABLE IV–9—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY
FATAL ACCIDENTS AND INJURIES—1992–2000

[As listed in the Consad report]

Consad accident No.	Year	Industry SIC code	Type of confined space	Number of reported fatalities	Inspection/ activity No.
57	1992	1623	sewer/pipe/manhole	1	109472456

Description of Accident:
At approximately 11:30 a.m. on April 16, 1992, Employee #1 entered a 15 ft. 9 in. deep manhole that was part of a new sewer line installation project in order to plug two sewer lines with wing nut plugs. Employee #2 and a third employee were at the top of the manhole watching as Employee #1 entered the hole and inserted one plug near the top, then proceeded down the ladder to the bottom to install the second plug, which took approximately 4 minutes to install. Employee #1 then stated he was hot, started up the ladder, and fell unconscious to the floor. Employee #2 entered the manhole and attempted to sit Employee #1 upright. Employee #2 then began feeling faint and started up the ladder to exit. A little more than halfway up he passed out and was left hanging from the ladder. The third employee then ran for help. A superintendent tied a rope around himself, held his breath, and rescued Employee #2, who was transported to the hospital, where, after undergoing a blood gas test, he was treated for carbon monoxide exposure. Employee # 1 died from acute carbon monoxide poisoning before he was retrieved from the manhole. The company had no confined space entry procedure in place for this particular job site because they did not consider new manholes to reasonably pose a risk to workers. No measuring equipment was used to detect toxic or combustible gases and oxygen levels. No mechanical ventilation was used. No rescue equipment was available.

61	1992	1799	Other	1	115562290

Description of Accident:
At approximately 7:45 a.m. on October 27, 1992, Employee #1 was preparing to fiberglass the interior surface of a swimming pool that measured 30 ft long and 16 ft wide with a depth of 4 ft at the shallow end and 9 ft at the deep end. Overnight, a water faucet adjacent to the pool had leaked water into the pool. Employee #1 was removing the standing water in the bowl of the deep end. Initially, he used a sponge and bucket to remove the water. Later, he used about 2 gal of acetone to help accelerate evaporation of the remaining water. He then used a non-explosion-proof shop vacuum to vacuum the remaining water-acetone mixture. Switching on the vacuum created a spark that ignited the acetone vapor in the bowl of the pool. The resulting explosion and fire caused second- and third-degree burns on 70 percent of his body. Employee #1 was hospitalized until November 12, 1992, when he died of complications.

64	1993	1623	sewer/pipe/manhole	1	114834930

Description of Accident:
On September 17, 1993, Employee #1, of Dan's Excavating Inc., a laborer on a sewer construction crew, entered a 26 ft deep manhole to check the line sight glass for water levels. After he had climbed to the bottom of the manhole, Employee #1 made a noise as if he were clearing his throat and then started climbing back out. When Employee #1 was 6 to 8 ft from the top he looked up, let go of the ladder, and fell backward to the bottom of the manhole. Employee #1 died of asphyxia. The atmosphere had not been tested before he entered the manhole. When it was later tested at the manhole level from which Employee #1 fell, an oxygen deficiency was found. Citations were issued for serious violations of R408.40121(1), R408.40121(2), and R408.41115(8).

65	1994	1771	sewer/pipe/manhole	1	124771049

Description of Accident:
Employee #1 was applying grout in a manhole. There had been a 20 to 36 in. rubber plug installed into a 36 in. sewer line that entered the manhole in which Employee #1 was working. For some unexplained reason, the rubber plug exploded, hitting Employee #1 and forcing him down the downflow side of the sewer line. Employee #1 died at the scene of severe head injuries.

66	1994	1629	Undetermined	1	107232167

Description of Accident:
Employee #1 entered a confined space with a lighted torch. The atmosphere was not tested and contained an explosive concentration of propane gas. The propane gas exploded, sending the employee approximately 20 feet in the air, and igniting his clothing. Employee #1 sustained 2nd- and 3rd-degree burns over 70 percent of his body. He died of respiratory arrest two days later. A propane torch had been left on in the space overnight and the flame had gone out, allowing propane to accumulate. Citations were issued.

67	1994	1623	Undetermined	1	124078163

Description of Accident:
Employee #1 died of asphyxia when he was directed to enter a confined space without full compliance with confined space standards and associated procedures.

68	1994	1623	sewer/pipe/manhole	1	109054866

Description of Accident:
Employees #1, #2, and #3 were in a dry well modifying sewer mains. Fluids left in the pipe for three months flowed into the work area. The fermenting fluids released hydrogen sulfide gas. Employees #1 and #2 were hospitalized. Employee #1 died of asphyxiation. Employee #2 is in a long term health care facility in Westchester, NY. Employee #3 was treated and released.

TABLE IV–9—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY—Continued
FATAL ACCIDENTS AND INJURIES—1992–2000
[As listed in the Consad report]

Consad accident No.	Year	Industry SIC code	Type of confined space	Number of reported fatalities	Inspection/ activity No.
69	1994	1794	sewer/pipe/manhole	1	110465739

Description of Accident:
At approximately 7:00 a.m. on November 21, 1994, Employee #1 and a coworker, laborers, began removing the rubber bladder plugs from a 48 inch storm sewer drain system to allow the construction site to drain off standing water captured by the blocked line. They climbed into the 10 foot deep manhole D–2, and placed two jointed pieces of 2 by 4s against the end of the metal portion on the rubber bladder plug and the manhole wall to prevent the plug from being swept downstream in the 48 inch storm sewer drain pipe. They then climbed out of manhole D–2. Air pressure was released from the plug installed in the storm sewer drain pipe in manhole D–2 to allow the stored water to pass. Employee #1 told his coworker to release the air pressure from the plug in manhole mixing box D–3, located approximately 71 feet away and upstream adjacent to the flightline. When the coworker arrived at mixing box D–3, it was under water. The employees conversed and the coworker was told to take the air release valve assembly out of the air vent hose to completely deflate the upstream plug. The employees knew this plug was secured by a rope attached to mixing box D–3. They stood around the opening to manhole D–2, and conversed when they noticed the 2 by 4 brace holding the rubber bladder plug in manhole D–2 in the inflow pipe was coming loose. Employee #1 entered manhole D–2 without an access ladder and attempted to shore up the brace by stomping it back into a horizontal position while standing on the lip of the outbound pipe. He was washed down the storm drain and drowned.

70	1995	1623	sewer/pipe/manhole	1	116508169

Description of Accident:
Employee #1 was standing on a ladder while removing the rubber plug of an 8 inch sewer line in a manhole. He fell from the ladder into the bottom of the manhole, which contained waste product. Employee #1 attempted to climb out, but fell backward into the manhole. Employee #1 drowned in the bio-residue that was at the bottom of the manhole.

72	1995	1542	Pit	2	108724915

Description of Accident:
At approximately 7:45 a.m. on November 9, 1995, Employees #1 and #2 were dismantling a scaffold that was approximately 12 ft above an open 45 ft by 60 ft excavation. Employee #1 allegedly fell into the pit on the west side. Employee #2 ran to the ladder on the east side of the pit to help. He collapsed at the bottom of the pit by the ladder. Employees #3 and #4 also went into the pit by the east side ladder. Employee #3 collapsed behind the ladder on a dirt mound about 3 to 5 ft above the bottom of the pit. While descending the ladder, Employee #4 began to feel lightheaded and weak in the knees, and was pulled out of the pit by two Reynolds employees. Two coworkers, who were fire brigade members, also responded to the emergency. One descended the ladder without SCBA and collapsed at the bottom of the pit on top of Employee #2. The other coworker also started down the ladder without SCBA, began to feel lightheaded and weak in the knees, and was pulled out by Reynolds employees. Employees #1 through #3 died of asphyxia and Employee #4 was hospitalized for approximately one month. Argon gas had been used instead of compressed air to operate a pump that removed water from the pit.

76	1996	1623	sewer/pipe/manhole	1	300602943

Description of Accident:
Employee #1 and a coworker were assigned to search for a missing plug in one of several manholes in an active sewer system. They opened three manholes, climbed down 12 ft, and used a flashlight to look in the 15 in. pipes. Employee #1 then went into a fourth manhole, where he was overcome by toxic gases. He died several hours later.

77	1996	1629	sewer/pipe/manhole	1	300947256

Description of Accident:
Employee #1, a laborer, and his foreman arrived at a manhole to open a mechanical valve at the bottom of the manhole. While Employee #1 was removing the manhole cover, the foreman was 5 ft away at his truck getting the air tester. When the foreman turned around to go back to the manhole, he saw the top of Employee #1's head disappear into it. The foreman then looked down into the manhole and saw that Employee #1 was unconscious. The foreman tested the air in the manhole and obtained a reading of 14% oxygen. He immediately called 911, and Employee #1's body was retrieved by the local fire department with the use of SCBAs. OSHA's testing of the manhole showed oxygen levels of between 12 and 14 percent. Tests for carbon monoxide, hydrogen sulfide, and flammable vapors were negative. Tests for carbon dioxide were positive, with a reading of 35,000 ppm.

78	1997	1711	Pit	1	116308453

Description of Accident:
Employee #1 was working at the bottom of a 10 ft deep pit when he passed out. A coworker who went down to rescue him started to feel sick, so he emerged from the pit and called for help. He then reentered the pit with a second coworker, who passed out before Employee #1 could be rescued. The first coworker was again able to escape. Emergency Services arrived and extricated Employee #1 and the second coworker from the pit. Employee #1 died of asphyxia from inhalation of argon gas.

TABLE IV–9—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY—Continued
FATAL ACCIDENTS AND INJURIES—1992–2000

[As listed in the Consad report]

Consad accident No.	Year	Industry SIC code	Type of confined space	Number of reported fatalities	Inspection/ activity No.
79	1997	1794	sewer/pipe/manhole	1	127317493

Description of Accident:
At approximately 11:00 a.m. on March 4, 1997, Employee #1 entered a recently constructed 8 ft deep by 4 ft diameter manhole to retrieve a clod of dirt on the bottom. He was one his way out when he fell back in and lost consciousness. Employee #1 died of asphyxia. He apparently was overcome by high levels of methane gas.

80	1997	1623	sewer/pipe/manhole	1	122227283

Description of Accident:
At approximately 4:30 p.m. on August 4, 1997, Employees #1 through #3 were working on a sewer system project in a residential area. Employee #1 descended into a 12 ft deep manhole to apply jointing compound and to remove some laser sighting equipment. After several minutes, Employees #2 and #3 noticed that Employee #1 had collapsed. They shouted to the foreman, who ran to the manhole, surveyed the situation, and immediately called 911 from his truck. Meanwhile, Employees #2 and #3 entered the manhole to rescue Employee #1. Employee #3 later stated that he did not notice any unusual odors, but that he and Employee #2 began to feel dizzy during their rescue efforts. They lifted Employee #1 to coworkers at the surface, after which Employee #3 climbed out of the manhole and collapsed. Employee #2 tried to ascend the ladder, but collapsed to the bottom of the manhole. Employees #2 and #3 were taken to separate hospitals and treated for carbon monoxide exposure. Employee #1 was taken to the emergency room, where he was pronounced dead. The autopsy report listed the cause of death as carbon monoxide inhalation. The employer had confined space entry procedures in place, but did not implement them. At the time of the accident, there was no rescue equipment near the manhole and testing was not done for toxic or combustible gases prior to the employees' entry. No mechanical ventilation was used for the manhole.

82	1998	1794	sewer/pipe/manhole	1	127298925

Description of Accident:
Employee #1 died of asphyxiation when he entered a sewer bore casing. Employee #1 entered the sewer bore casing when the casing struck a rock and was unable to get out. A second employee also went into the casing but managed to get out.

83	1998	1623	sewer/pipe/manhole	1	301312757

Description of Accident:
A construction crew of four men was tying an old sewer line into the new sewer system. Employee #1 broke a plug within the new sewer line and began to climb up the ladder toward the opening of the manhole. Gas rushed from behind the plug and overcame him, causing him to fall back into the hole. The second employee saw Employee #1 fall back into the manhole. He quickly went down to rescue him. The second employee partially reached the bottom of the hole before he decided to come back up. The two remaining employees eventually went down into the hole. The second employee managed to get out of the manhole and summon help. The Fire Department Rescue Team retrieved the third and fourth employees before they became totally incapacitated. Employee #1 died of asphyxiation. The other three employees were sent to the hospital for medical treatment.

84	1998	1623	sewer/pipe/manhole	2	110040383

Description of Accident:
Employees #1 and #2 were part of a construction crew building an extension sewer line that was to tap into an existing city line. The crew had exposed one side of a manhole in the city sewer line and a subcontractor had core-drilled a hole in it for placement of the new line. Some concrete remained intact after the drilling was completed. Employee #1 was lowered into the manhole using a chain draped over a rock bar. He was immediately overcome by the high levels of hydrogen sulfide. Employee #2 attempted to rescue him but was also overcome by the fumes. Both workers were killed.

85	1998	1623	sewer/pipe/manhole	1	302098892

Description of Accident:
Employee #1 entered a 9 ft deep manhole to apply sealant to the connecting concrete rings. This was the last, and the deepest, of the six manholes he had entered. Shortly after reaching the bottom, Employee #1 was overcome by hydrogen sulfide gas that had collected in the manhole. He was killed.

86	1998	4911	sewer/pipe/manhole	1	301768784

Description of Accident:
Some employees were installing a French drain system to collect water seeping from a slurry pond. The employees were entering the catch basin to do the final touch-up work by riding the bucket of a backhoe down into the basin. One of the employees, a 57-year old supervisor, was engulfed by vapors that were later found to be hydrogen sulfide. He died of inhalation of toxic fumes. Four other employees were hospitalized for exposure to the hydrogen sulfide.

TABLE IV–9—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY—Continued
FATAL ACCIDENTS AND INJURIES—1992–2000

[As listed in the Consad report]

Consad accident No.	Year	Industry SIC code	Type of confined space	Number of reported fatalities	Inspection/ activity No.
89	1999	7699	Tank	1	302710413

Description of Accident:
An employee was painting the interior of a 15,000-gallon water storage tank with epoxy primer paint. An airless spray was being used for this task. An organic vapor air purifying respirator was in use and three small exhaust fans were drawing from the 12-in. pipe openings in the tank. The employee was found dead at the bottom of the section of the tank used for initial filling and settling. There was no confined space program or procedure in place at the time of the incident and the employee was working alone without the knowledge of the supervisor(s). The medical examiner's report stated that death was caused by an overexposure to organic vapors consistent with those found in the paint formulation (MiBK, Toluene, Xylene). The Atlantic City Fire Department Confined Space Rescue Team had measured approximately 3 of the LEL for these vapors at the time they removed the deceased from the tank.

90	1999	1799	Other	1	302558580

Description of Accident:
Employee #1 was spraying Sunflex, a waterproofing substance, inside the bottom half of a 7 ft by 5 ft by 9 ft concrete stoop while the coworker went to their truck to get more insulating boards. When the coworker returned, he found Employee #1 collapsed at the bottom of the stoop. Employee #1 was rushed to the hospital, where he later died.

92	1999	1794	sewer/pipe/manhole	1	303139166

Description of Accident:
Employee #1 entered a new manhole approximately 21 ft in depth and was overcome, lost consciousness, and was unresponsive. Employee #2 entered the manhole in an attempt to rescue Employee #1 and was also overcome and lost consciousness. Two additional co-workers attempt[ed] to rescue Employee's #1 and #2 but became dizzy, disoriented and experienced shortness of breath. These employees were able to exit the manhole. The manhole had been installed approximately two weeks earlier and was placed over an existing and active sewer line which had not yet been tapped. Employee #1 was pronounced dead at the scene and Employee #2 was hospitalized.

95	2000	1731	sewer/pipe/manhole	2	119947521

Description of Accident:
Two employees of an electrical contractor were working in a 7.9-meter-deep sump manhole at a water desalination facility site under construction. An employee of a general contractor found the employees unconscious at the bottom of the manhole. An outside rescue service from a local fire department responded and found the atmosphere in the manhole to contain 8 percent oxygen at the bottom of the sump. The two employees died of hypoxic asphyxia. Post accident evaluations found oxygen levels as low as 2 percent and elevated levels of nitrogen and carbon dioxide. The sump was found to be in contact with warm, moist soil through a series of interconnected perforated pipes designed to drain excess groundwater. It was suspected that biological activity in the surrounding soil consumed the available oxygen and generated excess levels of nitrogen and carbon dioxide.

97	2000	1623	sewer/pipe/manhole	2	303961155

Description of Accident:
At approximately 12:15 p.m. on September 26, 2000, Employees #1 and #2 were trying to unclog a sewer line. Employee #1 entered the north manhole to place a bucket that would catch all the debris coming out of the pipe. Employee #2 was able to release the blockage in the south manhole, and the water moved to the north manhole. Employee #1, who was still there, called for help and Employee #2 ran to his assistance. Both workers succumbed to gas present in the pipe, and died of asphyxia.

98	2000	1771	sewer/pipe/manhole	1	303185839

Description of Accident:
Employee #1 inserted an inflatable plug into a storm sewer pipe located at a street drain so that the pipe could be pumped of water in order to perform concrete work at the other end of the pipe. He was half way in the drain and was pushing on the inflatable plug to check its fit. The plug burst and blew him down an intersecting pipe where he drowned.

99	2000	1799	Other	1	303682223

Description of Accident:
Employees #1 and #2, who worked for a nested maintenance contractor, were finishing the turnaround of the sulfur recovery complex at a refinery. They were removing a 14 in. isolation blind from the overhead inlet of a horizontal receiver vessel. The vessel was part of an amine treating unit that had been emptied, steamed out, and drained a few days before. After several attempts, the overhead piping had been replaced and the blinds had been removed and reinstalled. Employees #1 and #2 were working from a scaffold when they were exposed to strong hydrogen sulfide emissions from the vessel. Employee #1 staggered away, but within minutes had lapsed into unconsciousness and died. Employee #2 managed to escape and reach grade level. He was hospitalized for observation and released with no lasting effects. The vessel had accumulated sour gas from a connected overhead gas line, tied into nearby sulfur trains that were operating at relatively low pressure. The source was a single leaking 12 in. gate valve that had been closed and locked out. Employees #1 and #2 were working without respiratory protection or gas detection equipment. The valve inspection program, lockout/tagout program, and respiratory protections were found lacking. At the time of the accident, the foreman was also overseeing other crews at the site.

TOTAL NUMBER OF FATALITIES: 31

TABLE IV–9—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY—Continued
FATAL ACCIDENTS AND INJURIES—1992–2000
[As listed in the Consad report]

Consad accident No.	Year	Industry SIC code	Type of confined space	Number of reported fatalities	Inspection/ activity No.
TOTAL NUMBER OF FATALITIES PREVENTABLE BY THE CONFINED–SPACES–IN–CONSTRUCTIONS PROVISIONS: 30					

Source: OSHA IMIS database, analyzed by OSHA, Directorate of Standards and Guidance and Directorate of Construction.

OSHA also reviewed the narratives for accuracy. OSHA found duplicate fatalities reported for CONSAD Accident Numbers 65, 69, and 72, and removed those duplicates from the analysis. In this regard, Appendix C.1 of the CONSAD Report erroneously shows two fatalities for accident number 65, two fatalities for accident 69, and three fatalities for accident 72. The IMIS database for these cases, however, reported a total of one, one, and two fatalities, respectively. OSHA then reduced the 34 fatalities cited in the initial IMIS data report to a final total of 30 fatalities for the period of 1992 to 2000 to account for the three duplicative fatalities, in addition to removing the fatality described in CONSAD Accident number 67, discussed previously. OSHA notes that the original CONSAD analysis may not include all confined-space accidents. For example, the supplemental analysis at the end of this chapter found several confined spaces where there were electrical hazards; the CONSAD analysis did not include any electrical hazards. It is possible that the original analysis incorrectly excluded confined spaces when the only hazards were electrical.

Due to a confidentiality agreement with BLS, OSHA could not publish detailed information about the CFOI data used in the PEA, and OSHA no longer has access to the research file containing the data. To account for the possibility of human error of the initial review of the CFOI data, OSHA made a proportionate reduction in the total fatality count of the CFOI data used in the PEA. Applying a factor of 30/34 (derived from the adjusted count for IMIS fatalities due to reporting errors) to the initial CFOI fatality count of 24, the total number of CFOI fatalities decreased to 21.

Therefore, for this FEA, OSHA concluded that a total of 51 construction-related fatalities due to confined-spaces entries occurred during the nine-year period from 1992 to 2000. Full compliance with the provisions of this standard would prevent an average of 5.7 fatalities each year related to confined spaces in construction; applying a probability prevention rate of 91 percent, the standard would prevent 5.2 fatalities each year.

AGCA noted that the results from a survey of 74 of AGCA's members, employing 28,900 full-time workers, showed no fatalities in confined spaces, and only two fatalities in construction, between 2005 and 2007 (p. 59). The finding that 74 employers had no fatalities in confined spaces over a three-year period does not detract from, or contradict, OSHA's analysis. OSHA believes that such a result is perfectly consistent with the estimate that, from 1992 to 2000, there was an average of 5.7 preventable confined-space fatalities per year among the millions of workers engaged in construction covered by this standard.

Another comment from the AGCA report made several points asserting that a standard on confined spaces in construction was unnecessary. First, AGCA claimed that the rate of fatal and serious injuries ''in the affected industries'' is declining, and, second, that OSHA's analysis is deficient because it does not compare the construction rates with rates across other industries. The report states that ''[t]he injury trends have cost and benefit implications for assessing the proposal on a forward looking basis, which are not considered in the OSHA report'' (p. 58). In this case, the analysis of confined space incidents for the period 2006 to 2009 show a slight increase, rather than a decline, in the number of fatalities as compared to the original 1992 to 2000 period analyzed for the original PEA. OSHA therefore finds no reason to reduce benefits or costs as result of a long term trend toward safer practices in confined spaces. The report does not support its claim that OSHA's analysis was somehow deficient in not comparing the rates of injury in construction with the rates in other industries, but OSHA notes that construction activities generally have high injury rates. Moreover, contrary to the commenter's assertion that the fatality rate is declining in comparison to the older set of data analyzed in the PEA, when OSHA analyzed newer fatality data from between 2006 and 2009 (see Table IV–10) for the purpose of confirming the result under the older data, OSHA did not observe any decline. Instead, it found the annual fatality rate for confined spaces in construction over this period to be higher than during the earlier period.

The National Utility Contractors Association (NUCA) urged OSHA to model the construction rule on the general industry rule, as OSHA did in this final rule. In this comment, NUCA stated:

> It is also our opinion that there is no sound evidence to support the view that a new and separate standard for construction will reduce the number of confined space injuries and fatalities. * * * Therefore, issuing a new, separate standard for construction will not only create untold confusion, but also an unnecessary burden—with no improvement in safety—on all contractors who have been successfully using the General Industry Standard as a guideline to safe entry into confined spaces.

(ID–075.)

NUCA also suggested the new classification system in the proposed rule would have little benefit in terms of reduced accidents in confined spaces, but did not provide specific data to support their claims (ID–075). Other commenters pointed to the absence of fatalities among employers that complied with the general industry standard when engaged in construction activities (*e.g.,* ID–035 and ID–113).

As discussed extensively in the preamble, this final rule is much more similar to the general industry rule than was the proposed rule, and it includes a number of cost-saving measures not in the proposed rule. For example, this final rule excludes work performed under subparts S and entirely from the scope of the standard and allows suspension of the permit in certain circumstances. At the same time, the final rule for construction also includes several important distinctions and clarifications in comparison to the general industry standard. For example, the new rule defines the term ''controlling employer'' and shifts some of the duties that the general industry

standard assigns to the host employer to the controlling employer. This difference is important in the many situations, of which there are several reported in the database, involving host employers who need construction work but may not directly run the confined-space program.

This final rule for construction also requires continuous monitoring for atmospheric hazards during permit entries and during entries under the alternative procedures specified in § 1926.1203(e). With the improved technology available today, continuous monitoring involves few costs beyond the cost of the regular monitoring required by the general industry standard. Further, such monitoring is necessary in confined spaces where conditions change as the work progresses, either through the introduction of an unexpected substance into the permit space, as in accidents number 68 and 78, or the substances used as part of the work result in new hazards as in accidents number 89 and 90.

To further evaluate and confirm its finding that this final standard would reduce the number of fatalities and injuries when entering construction-related confined spaces, OSHA added a supplemental table (Table IV–10 shown below) using more recent accident data, and modified its methodology for selecting relevant confined-space fatalities. The Agency did not rely on this data in reaching any of the findings legally required to support this rulemaking, but the Agency concludes that this supplemental analysis confirms the overall validity of the data on which it based those findings.

The Agency examined selected narratives of fatal accidents that occurred in the years 2006 through 2009 and recorded in OSHA's IMIS database. To identify fatal accidents in confined spaces, OSHA conducted a terminology search of fatal accident narratives using a list of several terms appearing in confined-spaces-in-construction work.[42] To limit the analysis to accidents related to construction activities, OSHA identified construction-related accidents by those employers classified under the two-digit Standard Industrial Classification codes of 15, 16, and 17. As with the older data, OSHA also screened the accidents for citations to subparts P (Excavations) and S (Underground Construction). OSHA reviewed the cases and selected only those cases covered by this final standard and that the final standard would, with reasonable certainty, prevent if employer complied fully with its provisions. In sum, OSHA identified 23 records involving 31 fatalities from 2006 through 2009 that met all of the above criteria (construction-related activities; in SIC 15, 16, or 17; involved a confined space covered by this final standard; and were preventable by compliance with the provisions of the final standard). Table IV–10 presents these cases, along with a brief narrative for each case taken verbatim from the IMIS records.

As the narratives demonstrate, these accidents usually resulted from a failure to follow multiple provisions in the final standard. For example, in several of the accidents listed in Table IV–10, workers died or received injuries after entering confined spaces to attempt rescue. These accidents were preventable had employers followed appropriate rescue procedures, provided proper training, posted an attendant to prevent unauthorized entry, or through a combination of these steps, all prescribed by this final standard. In most other examples, the prohibition on entry without a permit program in place would prevent employee exposure to the hazard.

For the purposes of determining how the different provisions of the standard prevent the accidents identified in the supplemental analysis, OSHA grouped the provisions by general purpose. For example, OSHA grouped all provisions related to evaluation and classification of standards into one heading called ''Classification and Evaluation,'' and grouped all of the provisions related to setting up and implementing a permit system under the heading of ''Permit System''. OSHA used these headings to avoid a confusing list of overlapping and interdependent provisions, and to compare benefits to costs later in this section.

The Agency sometimes attributed an accident to a set of provisions even though it was unclear from the accident abstract whether the employer followed that provision on a voluntary basis. Therefore, although OSHA accounts for baseline compliance in terms of costs, it does not account for baseline compliance in terms of potential monetized benefits. OSHA believes from the descriptions of the fatalities and injuries presented in Table IV–10 that baseline compliance with most provisions, though high when examining compliance across all affected industries, was minimal in the situations in which these accidents occurred. It is unlikely that the accidents detailed in this chapter would occur had the affected firms had a proper confined-spaces program in place. Following some groups of provisions, such as ventilation and hazard isolation, would have assured that the accidents could not have possibly happened.

OSHA also used the term ''potentially'' in this analysis to describe the prevention of some accidents because, as noted above, some accident descriptions are unclear. The Agency also used the term because some provisions, such as the training and information-exchange provisions, do not directly and automatically prevent accidents, but instead contribute to the likelihood that employers will correctly follow other provisions and, therefore, prevent accidents. In the final section of this chapter, OSHA presents a break-even sensitivity analysis to examine further the number of injuries and fatalities that would need to be prevented for the benefits of this standard to equal its costs.

In some cases, a state had a confined-spaces rule in place at the time the accident occurred. In one accident, the state rule was a comprehensive rule similar to this final rule. OSHA removed this accident from the database. In other cases, the state rule included only some of the provisions in OSHA's final standard. In these cases, OSHA did not list provisions in the OSHA standard that are also mirrored in the state rule, but listed the OSHA provisions not mirrored in the state rule.

In the remainder of this section, OSHA describes the groups of provisions that it used in analyzing accidents, and the criteria for determining whether the provision could potentially prevent the accident. Some accidents involved more than one fatality, and, in these cases, different sets of provisions might be relevant to different fatalities.

Evaluation, Classification, and Notification Provisions: This group includes all provisions related to requirements to identify and classify confined spaces, such as §§ 1926.1203(a) and 1926.1203(b). The evaluation and classification provisions can trigger other employer duties, such as an employer duty to prevent entry under § 1926.1203(c), or to condition entry in accordance with § 1926.1203(d). For the purposes of this analysis, this group includes the provisions of § 1926.1203(c) that require employers to use barriers or other means

[42] The list of search terms included the following: Confined space, hole, pit, bin, boiler, manhole, tank, incinerator, scrubber, pier, sewer, transformer, vault, duct, storm drain, water main, drilled shaft, enclosed, enclosed beam, crawlspace, trench, tunnel, vessel, digester, lift station, cesspool, silo, air receiver, sludge gate, air preheater, step up transformer, turbine, chiller, bag house, mixer, reactor, and cofferdam.

necessary to prevent unauthorized entry to a confined space. Since no other preventive measures would go into effect without such evaluation and classification, OSHA found that these provisions had potentially preventive effects for all accidents examined.

Information-Exchange Provisions: This group includes all provisions related to requirements for host contractors, controlling contractors, and other contractors to exchange information, such as § 1926.1203(h). The accident descriptions are unclear regarding information-exchange activities. OSHA classified an accident as potentially prevented by these provisions if the description indicated the presence of more than one contractor or if the accident took place in an existing structure (mainly sewers) where information about the existing structure would almost certainly be known beforehand. OSHA did not consider the accident potentially prevented by this provision if it took place in a home or in new construction projects, unless there was an indication of multiple contractors present. In those cases, there is not typically a host employer with relevant knowledge about hidden hazards available, but there may be multiple employers present. Because the accident descriptions do not typically indicate whether there were multiple employers on a site, this approach may underestimate the number of multi-contractor sites.

Permit-Program Provisions: This group includes the provisions requiring a permit program or alternative procedures for entry, as well as the requirements for setting up and implementing systems, such as §§ 1926.1203(d), 1926.1203(e), and 1926.1204(a). OSHA determined that these provisions could have a role in potentially preventing accidents in all situations except where the entry took place by explicit orders of a supervisor or where the entry was for rescue purposes. (These two exceptions might be violations of these requirements, but it is unlikely that a permit system could prevent casualties related to rescue entry (though they might prevent the need for such entry) or entries explicitly approved by supervisors.) OSHA also noted situations in which an entry seemed to be unnecessary (such as entries to retrieve dropped items) and, therefore, was extremely unlikely to take place under a permit system with clear prohibitions on unauthorized entry. OSHA determined that all such accidents involving unnecessary entries would be preventable had employers complied with these provisions.

Early-Warning-System and Atmospheric-Testing or -Monitoring Provisions: This group includes all provisions that require or imply the need for atmospheric testing or monitoring, including § 1926.1203(a) (when monitoring is necessary for identification), §§ 1926.1204(b), 1926.1204(c), and 1926.1204(e). OSHA determined that these provisions could have a role in preventing accidents in all situations involving asphyxiation (whether due to lack of oxygen or toxic gasses) or a build-up of explosive vapors. This group also includes the requirement in § 1926.1204(e)(1)(iii) to monitor for non-isolated engulfment hazards, such as liquids flowing through a sewer system. OSHA determined that this provision could prevent accidents in which employees drown or asphyxiate when liquids or other flowables that were not previously in the confined space entered the space in the absence of barriers or other isolation methods designed to contain such hazards.

Ventilation and Hazard-Isolation Provisions: This group includes all provisions that require or imply the need for ventilation, as well as isolation of physical hazards, such as parts of § 1926.1203(e) and portions of § 1926.1204. OSHA included an accident as potentially preventable by these provisions whenever the accident occurred as a result of a hazard inside the confined space. For most of these accidents, either ventilation or hazard-isolation measures, such as disabling and locking out electrical hazards temporarily, could prevent the accident. For other accidents, such as some drownings, arranging for the bypass of water or other liquid solutions might have been possible, thereby preventing the accident.

Provisions Requiring an Attendant: This group includes all provisions that require or imply the need for an attendant when someone is inside the confined space. The attendant in most cases has two duties: (1) Assuring that continuous monitoring takes place (if it is appropriate) and warning the person to exit the space if necessary; and (2) conducting an appropriate non-entry rescue. For the purposes of this analysis, OSHA listed an accident as potentially preventable had an attendant been present if there was no notation of another person present when someone entered the confined space. There are many other situations in which the lack of an attendant may have been responsible for the accident because the person present was not continually assessing the conditions inside the permit space or was incapable of conducting a non-entry rescue or summoning rescue or emergency services; however, other provisions are more likely to potentially prevent such accidents.

Rescue-Capability Provisions: This group includes all provisions, such as §§ 1926.1204(i) and 1926.1211, that require the development and implementation of a plan addressing rescue capability and summoning emergency services, with the plan involving non-entry rescue when feasible. For the purposes of this analysis, OSHA listed an accident as potentially preventable by improved rescue capability for (1) all cases of asphyxiation when quick removal of endangered workers from the confined space and prompt treatment were necessary to prevent the fatality, and (2) for other accidents, such as drowning and electroshock, when timely removal and treatment might have an effect. OSHA did not consider this provision to have the potential to prevent deaths resulting from burns, even though it is possible that more immediate treatment or rescue before combustion occurred would mediate or prevent the accident. OSHA also noted under this provision the special, and all too numerous, cases when the rescuer(s) became a fatality.

Training Provisions: This group includes all provisions that require employers to develop and implement training, such as §§ 1926.1207 and 1926.1208. OSHA found that better training could potentially prevent all of the accidents, except for one accident that was preventable using only appropriate physical barriers.

Equipment Provisions: This group includes all provisions that require the employer to (1) provide necessary equipment, such as communication equipment, necessary for attendants to perform their duties (§ 1926.1203(d)(3)), or (2) develop appropriate lighting (§ 1926.1204(d)(5)). For the purposes of this analysis, OSHA listed an accident as potentially preventable by these provisions when employees working together had difficulties communicating or there was an indication of inadequate lighting or general difficulty locating physical hazards before contacting them. There are some provisions in this group that OSHA did not analyze in terms of their potential to prevent accidents. These provisions include requirements for barriers and disposable coveralls. However, OSHA's methods of searching for confined-space accidents could not identify the accidents that these provisions would prevent.

TABLE IV–10—CONFINED SPACES IN THE CONSTRUCTION INDUSTRY
FATAL ACCIDENTS AND INJURIES—2006–2009

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 1
2006	1611	sewer	2	309775443

Description of Accident:
An employee climbed down into a sewer vault to retrieve a tool he dropped and lost consciousness. A second employee entered the sewer vault in an attempt to rescue his co-worker and also lost consciousness. Both employees died.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program (1 of 2 fatalities)
(Not Ventilation and Hazard Isolation; Early Warning System and Atmospheric Testing or Monitoring; or Rescue Capacity because these were already required in the State where the accident took place)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 2
2006	1623	storm drain	1	308437631

Description of Accident:
Employee #1 and his crew were installing storm drainage pipes in an older neighborhood. During the installation of the drainage pipes, damage had been caused on the existing natural gas pipe lines in the neighborhood. The odor of gas was present prior to the day of the installation, and the local gas company had been contacted to identify and repair the leaks. The smell of gas was still present and noticed by the supervisor, employees and others; however, the supervisor did not contact the gas company to investigate the odor, and to locate the leak. The supervisor also did not remove the employees from the excavation where the gas odor existed, and did not test the atmosphere of the excavation to determine if there was a hazardous atmosphere or condition in the excavation. The supervisor directed Employee #1 to enter the 48-inch diameter drainage pipe line to retrieve a laser surveying machine that was located approximately 90 feet within the pipe line. Natural gas that had escaped from two breaks in the gas line had accumulated within the storm drain pipe line. While Employee #1 was in the pipe line, the natural gas within it ignited. The specific ignition source was not identified. Even though severely burned, Employee #1 was able to exit the storm drain pipe line, and was taken to the hospital. Six days later, he died as a result of his injuries.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 3
2006	1623	sewer	1	310350418

Description of Accident:
Three employees were working on a sewer system that was newly installed and not yet in use. A section of the line had been plugged and tested for leakage. Employee #1 entered the sewer vault, which was approximately 15 to 20 feet deep, to remove a plug. Employee #1 collapsed into approximately 6 inches of unidentified liquid at the bottom of the sewer vault. Employee #2 entered the sewer vault to assist Employee #1. Employee #2 also collapsed at the bottom of the sewer vault. Employee #3 attempted to provide assistance to Employees #1 and #2. Employee #3 began to feel ill about halfway down and then decided to emerge from the sewer vault. Fire/EMS Department responded to the scene. Coworkers of the employees attached a hose approximately 19 feet long to an air compressor and used it to blow air into the sewer vault. Employee #2 regained consciousness and was able to assist in rescuing Employee #1 and himself from the sewer vault. All three employees were transported to area hospitals. Employee #1 later died at the hospital. Employees #2 and #3 were treated, hospitalized, and released in the following days.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program
(Not Ventilation and Hazard Isolation, Atmospheric Monitoring, or Rescue capacity because these were already required in the State where the accident took place)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 4
2007	1541	manhole	1	311032809

Description of Accident:
Employee #1, while doing an elevation survey of the invert of a storm water pipe in a manhole, entered the manhole to find the bottom of the pipe. While in the manhole, Employee #1 was overcome due to a lack of oxygen and died. Employee #2 entered the same manhole, and was also overcome. Employee #2 was hospitalized and released the next day.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program (Entry very preventable)
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Attendant
Rescue Capacity
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 5
2007	1623	lift station	4	307043844

Description of Accident:
The victim was in the process of assisting another company with the replacement of a sump pump in an underground lift station which collected draining and leached water from a construction debris landfill. Three employees of the other company entered the lift station and succumbed to exposure to hydrogen sulfide gas. The victim had entered the lift station in an attempt to assist/rescue the three victims from the other company, and also succumbed to hydrogen sulfide gas. Rescue services arrived at the scene and performed air quality monitoring which revealed that the victim and the three victims from the other company were exposed to concentrations of up to 200 PPM of hydrogen sulfide gas. Body retrievals were initiated at that point. The lift station was determined to be a permit-required confined space. The other company (host employer) had not evaluated the lift station to determine that it was a permit-required space. Both companies had not developed and implemented a written permit space program.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program (3 of 4 fatalities)
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring
Rescue Capacity (Attempted rescue resulted in a fatality)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 6
2007	1623	manhole	2	310177456

Description of Accident:
Employees #1 and #2 were working in an approximately 7 ft diameter water vault located about 16 ft underground. The vault contained a 12 in. water main and a 4 in. water main that was equipped with a water meter. The vault had been constructed approximately ten days earlier and had sat undisturbed until the day of the accident, when the employees were scheduled to conduct a pressure test of the system. Employee #1, the foreman, went down into the vault to read the meter. When he did not return, Employee #2, a laborer, looked down through the manhole cover and saw Employee #1 laying on the ground. Employee #2 called out to a coworker that Employee #1 was down and then entered the vault through the manhole and climb down the ladder. The coworker came over to the manhole and saw Employee #1 on the ground and Employee #2 hanging upside down, with his leg caught between the ladder rungs. Neither employee responded to the coworker's calls. The coworker also started down the manhole but noticed an overpowering musty odor and abruptly stopped and exited. The Fire Department and paramedics responded to the job site and retrieved Employees #1 and #2, both of whom had died. At the time of rescue the Fire Department's four gas meters measured the oxygen level in the vault at approximately 9.2 ppm. In its referral to OSHA, the Fire Department referenced two workers who succumbed to an IDLH atmosphere.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program (1 of 2 fatalities)
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring
Rescue Capacity (Attempted rescue resulted in a fatality)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 7
2007	1623	manhole	2	310253398

Description of Accident:
Employee #1 and Employee #2 were both asphyxiated when they entered a 12 ft manhole to perform grouting work. Employee #1 entered the 12 ft manhole and collapsed. Employee #2 entered the manhole to help Employee #1 and then Employee #2 collapsed. This was the company's first time performing sewer line work and Employee #1 and #2 entered the space without required testing. The employer did provide a tripod winch system over the manhole with cable attached to rescue harness. In addition, a scott gas detector was used to detect any gases in hole; none was detected. The oxygen level however was 8 near the top of the hole and 3 at or near the bottom of the hole.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit program (1 of 2 fatalities)
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Provisions
Rescue Capacity (Attempted rescue resulted in a fatality)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 8
2007	1623	manhole	1	311354807

Description of Accident:
Employee #1 entered manhole to remove line plugs to activate a manhole sewer system, the manhole was 10.5 ft deep. The probable cause of death was H2S poisoning as a result of employee working in a sewer manhole; this is according to the county's forensic science department. The manhole had not been entered and was not monitored for toxicity, oxygen level or explosive levels. No tripod was in-place for emergency retrieval of Employee #1.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Provisions
Attendant
Rescue Capacity
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 9
2007	1721	crawl space	2	126192012

Description of Accident:
Employee #1, a painting contractor, was hired by the property owner to apply primer over the creosote floor joists. Employee #1 and #2 were working in a crawl space under the bedroom of the residence applying primer to the floor joists. The incandescent work lamp or a broken light bulb ignited the vapors from the primer. The two employees were burned and died. The other employees suffered minor burn injuries. The contributing causal factors: The air in the crawl space was not flushed or purged of flammable vapors and no air testing to determine whether dangerous air contamination or oxygen deficiency existed. Arson and homicide investigators were called to the scene and were investigating the cause of the accident, which appeared to be accidental. The crawlspace was located underneath one of the bedrooms and was measured between 21 in. to 22 in. from the foundation to the floor of the bedroom.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
(Not Ventilation and Hazard Isolation because this was already required in the State where the accident took place)
(Not Early Warning System and Atmospheric Testing or Monitoring because this was already required in the State where the accident took place)
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 10
2008	1711	lift station	2	312320666

Description of Accident:

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 10

Employee #1 entered a sewer lift station to check for leaks in the line. Employee #1 was overcome by hydrogen sulfide gas. A second employee entered the station to retrieve Employee #1, and also was overcome by the gas. Both employees died from overexposure to hydrogen sulfide gas.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Provisions
Rescue Capacity (Attempted rescue resulted in a fatality)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 11
2009	1623	manhole	1	313122616

Description of Accident:
Employee #3 fell into a manhole and suffered a head injury and was life-flighted to the hospital. Employee #2 became unconscious in a manhole and was rescued and life-flighted to the hospital. Employee #1 entered the manhole to attempt rescue of employee #2 and became unconscious and died before he could be rescued.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Provisions
Rescue Capacity (Attempted rescue resulted in a fatality)
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 12
2009	1791	tank	1	311964886

Description of Accident:
Employee #1 was found unresponsive on scaffolding in the residential water tank in which he was performing stick welding on the interior overhead of the tank. He was removed from the tank, and emergency services summoned. He could not be revived. The medical examiner determined that core body temperature of employee #1 exceeded 109 degrees Fahrenheit, indicating that the preliminary cause of death was hyperthermia.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation (ventilation required beyond the amount needed to address welding fumes)
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 13
2009	1794	manhole	1	309620219

Description of Accident:
An employee entered into 18-in. manhole to retrieve part of laser equipment and was overcome by methane and lack of oxygen. He died of asphyxiation.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program (Entry very preventable)
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring Provisions
Attendant
Rescue Capacity
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 14
2009	1794	tunnel	1	313553604

Description of Accident:
Employee #1 was inside a 24 inch pipe that ran through a tunnel underneath a highway. Employee #1 was approximately 140 feet inside the pipe when a rain storm flooded the pipe drowning the employee.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Information Exchange
Permit Program
Attendant
Rescue Capacity
Training
Early Warning System

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 15
2006	1711	Crawl space	1	309539559

Description of Accident:
On August 7, 2006, Employee #1, of Mesquite Plumbing Company, entered the crawl space of a house undergoing renovations to insulate a new plumbing fixture that a coworker had installed. During the course of his work he contacted a live wire and was electrocuted.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit program
Ventilation and Hazard Isolation
Attendant
Rescue Capacity
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 16
2006	1623	manhole	1	310345053

Description of Accident:
On September 28, 2006, Employee #1, a construction worker, fell into a concrete manhole structure. He suffered a fractured neck and back. Employee #1 was flown by helicopter to the hospital, where he died.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Equipment (lack of cover or methods of assuring safety when a cover is removed)

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 17
2007	1521	crawl space	1	120205794

Description of Accident:
On July 23, 2007, Employee #1, age 19, and a coworker were reinstalling an electrical outlet into a new bathroom wall after it had been removed from the pre-existing wall. The 120-volt outlet electrical box was energized and lying on the floor. Employee #1 went into a crawl space under the house while the coworker went to the electrical panel and shut off the power to the home. Employee #1 was having trouble seeing in the darkness of the crawl space, and he asked the coworker to turn on the power so he could use a halogen lamp that had a cord running up through the floor and into an outlet in the kitchen. When the coworker turned on the power, this also energized the electric conductors that Employee #1 was wiring in the junction box. He was lying on his back under the floor, on top of the water line for the home. This pipe had been used to ground the electrical system of the house when it was built and Employee #1 was electrocuted when he connected the wires. The coworker, hearing a noise, tried to communicate with Employee #1. When he did not get a response, he again turned off the electricity to the house. The coworker alerted the owner and tried to call 911 on his cell phone, but could not get through. He and the owner tried to call 911 on the house's land line, but it was electrically-based, and so they once again turned on the power to place the call. The owner then cut a hole in the floor, removed Employee #1 from the crawl space, and attempted CPR until paramedics arrived. The coroner stated cause of death was low voltage electrocution.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 17

Equipment (lighting)
Rescue Capacity

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 18
2007	1741	boiler	1	311213326

Description of Accident:
On December 11, 2007, Employee #1 was part of a crew engaged in stone work at a residential site. To complete the job, they covered the chimney with plastic. Once the plastic was in place, the coworkers went to put away the tools for the night, and left Employee #1 to stitch close [ ] any openings in the plastic covering. The chimney housed the vent for an Ultra 310 boiler system. When the coworkers returned, they found Employee #1, unconscious, in the plastic enclosure. He died of carbon monoxide poisoning.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program (Entry very preventable)
(Not Ventilation and Hazard Isolation or Rescue Capacity because this was already required in the State where the accident took place)
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 19
2008	1711	crawl space	1	311794093

Description of Accident:
On or about 3:30 p.m. on November 6, 2008, Employee #1, a 31 year-old-male working for Atm Plumbing, was working in a crawl space under a private house. The crawl space was wet from recent rains. Employee #1 was using a manual operated pipe cutter to cut a water pipe when he received an electrical shock and became unconscious. Employee #2 was also under the house using a trouble light to illuminate the work area was not using a GFCI. Unbeknown to Employee #1 the water pipe that he was working on was also used for the electrical grounding system for the house. Employee #2 pulled him out of the crawl space. Paramedics transported Employee #1 to a local hospital where he was pronounced dead.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation
Attendant
Training
Equipment
Rescue Capacity

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 20
2008	1711	duct	1	311815492

Description of Accident:
On May 21, 2008, Employee #1 was with a crew installing a steel security grate inside the duct system of a 10-ton Trane air conditioning system (Model Number THC120A4RGAOW2B, Serial Number 8044100711L) that was located on a roof. As he crawled into the duct to weld the grate into place, the back of his head contacted an energized heat strip on the air conditioning unit coil. Employee #1 was electrocuted. The electrical power to the air conditioning unit had not been deenergized and locked or tagged out.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation
Rescue Capacity
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 21
2008	1742	attic	1	312098551

Description of Accident:

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 21

On May 17, 2008, Employee #1 was spraying foam insulation in the enclosed attic space of a two story, single-family home that was undergoing renovations. He had accessed the attic via an aluminum ladder through a hole in the second floor ceiling. A flash fire occurred, killing Employee #1. Inadequate ventilation contributed to the buildup of vapors. The ignition source was not determined.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation
Early Warning System and Atmospheric Testing or Monitoring (Work may have caused build-up of vapors)
Attendant
Training

Year	Industry SIC	Type of confined space	Number of reported fatalities	Activity No. 22
2009	1731	crawl space	1	313555591

Description of Accident:
On August 18, 2009, Employee #1 was installing a new direct TV cable. Employee #1 was crawling under the house and came into contact with an energized wire. He was electrocuted.

Provisions That Could Potentially Have Prevented the Fatality:
Evaluation and Classification
Permit Program
Ventilation and Hazard Isolation
Rescue Capacity
Attendant
Training
Total Number of Fatalities: 30

Source: OSHA IMIS database, analyzed by OSHA, Directorate of Standards and Guidance and Directorate of Construction.

For the FEA's supplemental data as shown in Table IV–10, OSHA, as previously noted, carefully reviewed and selected from the IMIS database only those cases determined preventable by full compliance with the provisions of the final standard. As a result, OSHA did not need to apply a probability prevention rate to estimate the number of preventable fatalities. As itemized above, OSHA identified 30 preventable fatalities over the four-year period, 2006–2009, for an average of 7.5 fatalities prevented annually by full compliance with this final standard. This supplemental analysis supports OSHA's conclusions that the problem of confined-space fatalities did not diminish in the construction industry over this period, and that the regulated community still needs the final standard. OSHA does not believe this supplemental analysis is necessary, but believes that it will aid the public in understanding OSHA's conclusions.

It is important to note that the approach used in this estimation is conservative in that there are other fatal events that were likely preventable but not included in the IMIS database. For example, the Bureau of Labor Statistics' Census of Fatal Occupational Injuries for 2011 showed 111 fatalities in construction from exposure to harmful substances or environments, and 123 fatalities from contact with objects and equipment (these numbers include 4 fatalities in new single-family housing construction from contact with objects and 10 fatalities in residential remodeling from exposure to harmful substances or environments). Some fatal injuries that are preventable by the final standard may not appear in the IMIS database because the database only includes accidents involving a fatality or a catastrophe with three or more injuries that result in hospitalization.

Estimation of Averted Injuries

In a 1994 report to OSHA, the Confined Spaces Work Group of the Advisory Committee on Construction Safety and Health (ACCSH) estimated that the ratio of lost time injuries (LTI) to fatalities in confined spaces was approximately 100:1 for general industry and 200:1 for construction (see ACCSH, 1994, pg. 6). In the PEA, OSHA used this range of 100 to 200 LTIs per fatality to estimate the number of injuries prevented by the proposed rule. At the public hearing on the proposed rule, the Edison Electric Institute's representative noted, ''There's no explanation or support for the assertion that there has been under-counting of injuries, however, and we cannot discern any basis for multiplying these numbers by 100 and 200'' (ID–210, Tr. p.99). As noted above, OSHA explained that those estimates came from the ACCSH report, which was the best available evidence. The commenter did not dispute those numbers or, more importantly, provide any alternatives numbers as its best evidence. Perhaps the commenter mistakenly concluded that OSHA multiplied the IMIS *injury* numbers by 100 and 200; however, the multiplication applied to the numbers of *fatalities,* because OSHA does not have data on the number of non-fatal injuries.

In this FEA, OSHA provided updated estimates of the number of non-fatal injuries involving confined spaces in construction and further clarified the basis for its estimates. As a preliminary matter, the Agency notes again that OSHA's IMIS database, which is the source of information about fatal accidents, does not report most injuries. As noted above, the IMIS database includes only accidents involving a fatality or a catastrophe with three or more injuries that result in hospitalization. Therefore, the IMIS database seldom captures injuries involving accidents that do not result either in a fatality or hospitalization of three or more workers.[43] Because OSHA

[43] The Survey of Occupational Injuries and Illnesses (SOII) produces annual estimates of counts and rates of new workplace injuries and illnesses,

could not find a data source for reliable estimates of non-fatal injuries in confined spaces in construction,[44] OSHA again relied on the expertise of ACCSH for these estimates.

Recognizing the age of the ACCSH Work Groups' LTI estimates of 100:1 and 200:1, OSHA attempted to corroborate these estimates using data from the BLS CFOI and the BLS Survey of Occupational Injuries and Illnesses (SOII). According to BLS,[45] in 2009, there were a total of 4,090 occupational fatalities and 3,277,700 nonfatal occupational injuries for private industry overall, and 834 fatalities and 251,000 nonfatal injuries for the construction industry. Using these estimates of fatalities and injuries, the ratio of injuries to fatalities is 800:1 for all private industries, and 300:1 for the construction industry.

In light of the large injury-to-fatality ratios apparent in the recent CFOI and SOII data, OSHA confirmed that the ratios recommended by the expert ACCSH Confined Spaces Work Group are reasonable and conservative, and used the average of the two ratios (150 injuries per fatality) in this FEA to estimate the number of non-fatal injuries. Calculations relating publicly reported injury-to-fatality statistical data in construction also confirm the reasonableness of the estimates OSHA used.[46]

Based on OSHA's annual estimate of 5.2 confined-spaces-in-construction fatalities avoided when fully complying with the provisions of this standard, and the 91 percent preventability rate, OSHA estimated that there would have been a total of between 520 and 1,040 confined-spaces-in-construction non-fatal injuries during the period of 1992 to 2000, with a midpoint of 780 as the total number of non-fatal injuries avoided each year when fully complying to the provisions of this standard. Applying a similar methodology of a 100:1 to 200:1 fatality-to-injuries ratio to the supplemental data in Table IV–10, OSHA estimates that, given 30 fatalities between the period of 2006 to 2009, there would be a total of 3,000 and 6,000 non-fatal injuries prevented by the final standard in that time period, or an average of 750 and 1,500 (with a midpoint of 1,125) injuries prevented per year.

Assignment of Monetary Values to Avoided Injuries and Fatalities

In the PEA, OSHA used a willingness-to-pay approach to estimate a monetary value of $50,000 for each prevented injury and $6.8 million for each prevented fatality. One commenter stated that the estimated value of $50,000 per prevented injury had ''absolutely no foundation or source for accuracy'' and was ''substantially inflated,'' but did not provide any specifics or suggest an alternative (ID–100). The AGCA report suggested that OSHA instead use workers' compensation claims, which it estimated to be $242,770 per fatality and $31,664 per injury (ID–222).

Workers' compensation claims do not reflect a willingness-to-pay approach or represent the full costs associated with workplace fatalities and injuries. Workers' compensation systems cover medical expenses and partial payment of wages lost as a result of workplace accidents, or, in the case of fatalities, burial costs and part of lost future wages. However, workers' compensation does not cover other costs resulting from fatalities and injuries, such as pain and suffering. Therefore, it would be inaccurate to base estimates of total societal costs of injuries and illnesses on workers' compensation claims.

As in the PEA, and following the approach recommended by OMB Circular A–4 (OMB, 2003) and common analytic practice, OSHA developed estimates of the benefits of avoided injuries and fatalities in this FEA based on the willingness-to-pay to avoid a marginal increase in the risk of a fatality or injury, as explained below. In addition, in this FEA, OSHA updated the estimated monetary value of reductions in fatalities and injuries presented in the PEA from 2002 to 2009 dollars. While a willingness-to-pay (WTP) approach clearly has theoretical merit, an *individual's* willingness to pay to reduce the risk of fatality may underestimate the total willingness to pay, which could include the willingness of others—particularly the immediate family—to pay to reduce that individual's risk of fatality.[47]

For estimates using the willingness-to-pay concept, OSHA relied on existing studies of the imputed value of fatalities avoided based on the theory of compensating wage differentials in the labor market. These studies rely on certain critical assumptions for their accuracy, particularly that workers understand the risks to which they are exposed and that workers have legitimate choices between high- and low-risk jobs. These assumptions are far from realized in actual labor markets.[48] A number of academic studies, as summarized in Viscusi & Aldy (2003), show a correlation between higher job risk and higher wages, suggesting that employees demand monetary compensation in return for a greater risk of injury or fatality. The estimated trade-off between lower wages and marginal reductions in fatal occupational risk—that is, workers' willingness to pay for marginal reductions in such risk—yields an imputed value of an avoided fatality: The willingness-to-pay amount for a reduction in risk divided by the reduction in risk.[49] OSHA used this approach in many recent proposed and final rules. (See, for example, 69 FR 59305, 59429 (Oct. 4, 2004) and 71 FR

but also is subject to under-reporting for a variety of reasons, including missing cases, the reporting of sample cases from large establishments, timeliness of updates to the logs and data collection, and employer doubts about the recordability of some cases (see Ruser, 2008). Furthermore, OSHA is unable to confirm the determination of accidents in ''confined spaces'' as defined by SOII and, therefore, relied on OSHA's IMIS database.

[44] OSHA takes note of the AGCA survey finding of only 2 confined-space injuries among the 74 responding employers (ID–0222, p. 29). However, this finding does not furnish a basis for estimating the number of injuries preventable with full compliance with this rule due to its lack of representativeness. Not all of the respondents even had confined spaces on their job sites. Moreover, AGCA designed the survey explicitly not to learn about injuries in confined spaces, but ''to determine the impact of compliance costs for contractors under OSHA's Proposed Rule on Confined Space [sic]. . . . '' It instructed respondents to ''carefully review the background information detailed below . . . before submitting your information. OSHA's proposed rule for confined space [sic] in construction is complicated, costly to implement, and does not provide significant increases in safety above the existing general industry standard.'' The survey did not provide a definition of a confined space or otherwise seek to ensure that the person filling out the survey was familiar with the appropriate definition.

[45] Table A–1, Fatal Occupational Injuries by Industry, Event and Exposure, available at *http://www.bls.gov/iif/oshwc/cfoi/cftb0241.pdf*, and Table 2, Number of Nonfatal Occupational Injuries and Illnesses by Case Type and Ownership for Selected Industries, 2009 News Release USDL 10–1451, available at *http://www.bls.gov/news.release/pdf/osh.pdf*.

[46] See, for example, Dong, X., et al. (2011).

[47] See, for example, Thaler and Rosen (1976), pp. 265–266; Sunstein (2004), p. 433; or Viscusi, Magat and Forrest (1988), the last of whom write that benefits from improvement in public health ''consist of two components, the private valuation consumers attach to their own health, plus the altruistic valuation other members of society place on their health.'' This paper uses contingent valuation methods to suggest that the effect of altruism could significantly alter willingness-to pay estimates for some kinds of health improvement. There are, however, many questions concerning how to measure this and the conditions under which it might matter.

[48] See, for example, the discussion of wage compensation for risk for union versus nonunion workers in Dorman and Hagstrom (1998).

[49] For example, if workers are willing to pay $90 each for a $1/100{,}000$ reduction in the probability of dying on the job, then the imputed value of an avoided fatality would be $90 divided by $1/100{,}000$, or $9,000,000. Another way to consider this result would be to assume that 100,000 workers made this trade-off. On average, one life would be saved at a cost of $9,000,000.

10099 (Feb. 28, 2006), the preambles for the proposed and final hexavalent chromium rule, and 78 FR 56274, 56388 (Sept. 12, 2013), the preamble for the proposed respirable crystalline silica rule.) The Agency views the WTP approach as the best available, and relied on it to monetize benefits. Viscusi & Aldy (2003) conducted a meta-analysis of studies in the economics literature that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs and found that each fatality avoided valued at approximately $7 million in 2000 dollars. Using the GDP Deflator (U.S. BEA, 2010), this $7 million base number in 2000 dollars yields an estimate of $8.7 million in 2010 dollars for each fatality avoided.[50] [51]

OSHA views these estimates as the best estimates currently available, and will use them to monetize avoided fatalities and injuries resulting from this final standard.

Net Benefits

Table IV–11, which repeats Table IV–1 for the convenience of the reader, provides a summary of the estimated costs, benefits, and net benefits of the final standard, using discount rates of 7 percent and, alternatively, 3 percent, as recommended by OMB Circular A–4. OSHA estimated the total benefits of the final standard to be $93.6 million annually—of which $45.2 million come from prevented fatalities and $48.4 million from prevented injuries. OSHA took the annualized costs of $60.3 million, using a 7 percent discount rate, from Table IV–13 in Chapter 6 of this FEA. OSHA estimated net benefits of the final rule to be $33.3 million annually, using a 7 percent discount rate. OSHA estimated that compliance with the final standard will provide $1.55 of benefits per dollar of cost.

TABLE IV–11—NET BENEFITS

[Millions of 2009 dollars]

	7% Discount rate	3% Discount rate
Annualized Costs		
Evaluation, Classification, Information Exchange, and Notification	$12.4	$12.2
Written Program, Issue Permits, Verify Safety, Review Procedures	4.2	4.2
Provide Ventilation and Isolate Hazards	2.8	2.7
Early Warning System and Atmospheric Testing or Monitoring	11.4	11.3
Attendant	3.6	3.6
Rescue Capability	8.2	7.6
Training Provisions	11.3	11.3
Other Requirements	6.4	6.3
Total Annual Costs	60.3	59.2
Annual Benefits		
Number of Injuries Prevented		780
Number of Fatalities Prevented		5.2
Monetized Benefits		$93.6
Net Annual Monetized Benefits (Benefits Less Costs)		
	$33.3	$34.4

Potential Net Benefits of the Individual Provisions of the Rule

As indicated in Table IV–11, the estimated benefits of the final standard are nearly 50 percent larger than the estimated costs. Nevertheless, it is possible that the costs of particular provisions could exceed their benefits. To address this possibility, OSHA conducted a supplemental analysis of the net benefits of the individual provisions of the final rule that have associated costs.

Because the final rule contains jointly interacting and overlapping provisions, there are two logistical issues with performing a provision-by-provision sensitivity analysis of whether benefits exceed costs in this case: (1) The available data do not permit OSHA to determine the numbers of accidents that every combination of provisions could prevent; and (2) a simple marginal analysis will not fully address the question of whether benefits exceed costs for the rule as a whole. It might, for example, take two or more provisions to prevent a class of accident: An analysis of the effects of a requirement to do x if situation y is the case would be dependent on not only the requirement to do x if situation y is the case, but also a requirement to train workers to do x, as well as a requirement to inform workers of when y is the case. In such circumstances, while each provision alone might pass a marginal benefit-cost test, all of the provisions together might not pass a benefit-cost test because the provisions would prevent the same accidents. The three provisions, each costing $5 million (for a total cost of $15 million), might prevent only $12 million worth of accidents because the three provisions would prevent the exact same accidents. Thus, even if a provision-by-provision sensitivity analysis were possible for

[50] The Agency notes that two recent studies mentioned in this chapter—Kniesner et al. (2010) and Kniesner et al. (2012)—report similar estimates. The median quintile estimate of the imputed value of an avoided fatality in Kniesner et al. (2010) is $9.2 million in 2010 dollars, while Kniesner et al. (2012) provide a range of estimates between approximately $5 million and $12 million in 2012 dollars. For the purpose of this PEA, OSHA chose to rely on the Viscusi and Aldy (2003) meta-analysis rather than the two more recent individual studies.

[51] An alternative approach to valuing an avoided fatality is to monetize, for each year added to a life, an estimate from the economics literature of the value of that statistical life-year (VSLY). See, for instance, Aldy and Viscusi (2007) for a discussion of VSLY theory and FDA (2003), pp. 41488–9, for an application of VSLY in rulemaking. OSHA did not investigate this approach.

this rule, that analysis might still not demonstrate the total benefits of the overall combination of provisions. Moreover, for the purpose of determining whether benefits of a rule exceed the costs, one cannot simply test each provision individually, but must find ways to examine situations involving likely joint effects of the provisions of the rule.

This provision-by-provision analysis addresses both of these problems and takes the form of a break-even sensitivity analysis that compares the potential benefits of a set of provisions against the costs of those provisions and, separately, all provisions that, when combined, achieve those particular benefits. Thus, a break-even sensitivity analysis in this case represents an estimate of the percentage of potentially preventable accidents that an individual provision, or a combination of provisions, must prevent for the benefits to equal the costs. Any percentage of preventable accidents a provision or combination of provisions prevents that are greater than this percentage would result in benefits exceeding costs.

For each narrative of the 30 preventable confined-spaces-in-construction fatalities and injuries for the period 2006–2009 presented in Table IV–10, OSHA listed the sets of provisions of the final rule that, if followed, would potentially prevent the fatalities. For some provisions, such as requirements to evaluate and classify spaces and to develop and implement permit systems, the narratives do not clearly state whether or not employers met these requirements. In these cases, OSHA listed those provisions as being among those that would potentially prevent the fatality, even though it is possible that the employer took steps to implement the required provisions. For other provisions, such as those for early warning system and atmospheric testing or monitoring, the narratives do not clearly state that there was such monitoring, but it seems unlikely that someone would enter some of these extremely dangerous atmospheres had information on that danger been available as a result of an early warning system and atmospheric testing or monitoring. Finally, it is clear from the descriptions that employers simply did not follow provisions relating to ventilation and hazard isolation. Table IV–12 shows the aggregate results for each set of provisions organized according to the organization of costs provided in Chapter 5. Table IV–12 then monetizes the prevented fatalities and injuries associated with each cost category and compares that monetized total to the estimated costs for each cost category. Finally, OSHA estimated the percentage of benefits that a given provision needs to produce zero net benefits (that is, when the estimated value of the prevented injuries and fatalities equals the estimated cost of the related provision). Any percentage greater than zero net benefits will produce positive net benefits. Table IV–12 also shows the results of this analysis.

Before examining the benefits attributable to the provisions of the final standard, OSHA examined the break-even sensitivity of the standard as a whole and found that if compliance with the standard prevented 45 percent of the fatalities recorded, then the benefits would equal the costs; with any higher percentage prevention, benefits would exceed the costs. OSHA considers it a near certainty that compliance with the final standard would achieve this level of benefits. For example, full compliance with the final standard would avoid almost all fatalities involving asphyxiation, and 60 percent of the accidents involved asphyxiation. Thus, if full compliance with the final standard prevents just one class of accidents, the standard would result in benefits that exceed costs.

To discuss the results shown in Table IV–12, OSHA will consider the results for each provision in turn, as described in the following paragraphs.

Evaluation and Classification: The portions of the standard covered by this cost category are only effective if combined with other measures. Evaluation and classification alone, without taking the further steps needed to ameliorate the hazards, would be largely pointless. The need for this provision, in the context of benefit-cost analysis, is to assure that employers do not have to treat every confined space as containing hazards; rather, it allows employers to simply restrict entry or to implement the subsequent parts of their confined-spaces program only when a hazard exists within a given confined space.

This set of provisions is critical to reducing the costs of all other provisions more than directly preventing fatalities. If the evaluation and classification provisions reduce the costs of the standard as a whole by 5 percent ($3.1 million costs of this provision divided by $60.3 million costs of the remaining provisions), then these provisions will be useful. Given the vast number of confined spaces that do not require the ensuing steps, these provisions are almost certainly cost effective, and are necessary given the standard as a whole has positive net benefits—as was shown above.

To further evaluate the necessity and benefit of the evaluation and classification provisions, it is necessary to examine state programs. Only two of the accidents examined from 1992–2000 and 2006–2009 occurred in states with comprehensive programs similar to what OSHA is proposing. Five accidents occurred in states that required some provisions included in OSHA's confined-spaces-in-construction rule, such as ventilation and atmospheric monitoring, but did not require evaluation or permit systems. This result may suggest that there may be advantages to a full, comprehensive program that explicitly requires evaluation and classification. However, OSHA has not been able to do any quantitative analysis of the rates of confined space fatalities in these states as against other regulatory regimes.

Information Exchange: The exact economic benefits of information exchanges are particularly difficult to pinpoint. Nevertheless, the benefits of these provisions will exceed the cost if the final standard prevents 10 percent of the potentially affected accidents.

Permit Programs: Table IV–12 shows that if these provisions prevent 4 percent of the accidents where they are potentially relevant, then the benefits will equal the costs, and if they prevent more than 4 percent, the benefits will exceed the costs. A system of permits might prevent, or have been a key part of preventing, many fatalities. As a result, achieving a 4 percent prevention rate seems reasonable. Further, at least 12 percent of the accidents potentially prevented by this provision (Incidents 2 and 13) involved casual entry (*e.g.,* to retrieve a dropped item), or entry prior to testing, that a proper permit system would completely prevent. Preventing these two accidents alone would assure that the benefits of the provision exceed the costs.

Early Warning Systems, and Atmospheric Testing and Monitoring: Early warning systems, and atmospheric testing and monitoring, can prevent accidents that result in asphyxiation or caused by explosive gases, or where early warning of oncoming liquids would prevent drowning. The presence of atmospheric testing or monitoring data would prevent most of these accidents because it is unlikely that anyone would knowingly enter a space with a lethal or explosive atmosphere, especially when provisions are in place to assure against unauthorized entry. Table IV–12 shows that if these provisions prevent 14 percent of the accidents for which they are potentially

relevant, then the benefits will equal the costs, and if they prevent more than 14 percent of the accident, the benefits will exceed the costs. OSHA believes that it is likely that atmospheric monitoring could prevent a much higher percentage of these accidents. In addition, there is one accident potentially prevented by an early warning system.

Requirement for an Attendant: This heading includes the provisions that require an attendant whenever an employee enters a permit-required confined space, such as §§ 1926.1204(f), 1926.1209(f) and 1926.1209(h). These provisions function in conjunction with the requirements for adequate rescue capacity. In the absence of appropriate rescue capacity, persons standing by a confined space may attempt a rescue that exposes them to the hazard. Table IV–12 shows that if these provisions prevent 6 percent of the accidents in which the person who died entered a confined space completely alone, then the benefits will equal the costs, and if the provisions prevent more than 6 percent of the accidents, the benefits will exceed the costs. OSHA believes that it is reasonable that appropriately trained and equipped attendants could prevent this percentage of accidents.

Ventilation and Hazard Isolation: The standard generally requires the use of ventilation when possible to address atmospheric hazards, but it can be difficult for the purposes of this sensitivity analysis to determine in which situations ventilation, rather than PPE, might be sufficient. It is clear, however, that when ventilation is appropriate, assuring its effectiveness would completely prevent ventilation-related fatalities. The same is true for hazard-isolation methods such as deactivating and locking out electrical sources and creating by-passes for water around confined spaces. Table IV–12 shows that if these provisions prevent 3 percent of the accidents for which they are potentially relevant, then the benefits will equal the costs, and if they prevent more than 3 percent of these accidents, the benefits will exceed the costs. Therefore, even if proper ventilation or isolation prevented one in five of the fatalities identified as potentially avoidable with proper ventilation or isolation, then the benefits of these provisions would exceed the costs. While the exact number of situations in which ventilation or isolation would have been the hazard-reducing measure of choice is uncertain, OSHA is confident that at least 3 percent of those identified would require ventilation or isolation.

Rescue Capacity: These provisions include all requirements related to rescue, including the requirement for non-entry rescue whenever feasible. Table IV–12 shows that if these provisions prevent 9 percent of the accidents for which they are potentially relevant, then the benefits will equal the costs, and if they prevent more than 9 percent of the accidents, the benefits will exceed the costs. Given that 15 percent of the accidents for which OSHA identified inadequate rescue capacity as a factor in a fatality involved deaths of additional workers during an attempted rescue, then following provisions for non-entry rescue would reasonably prevent more than 9 percent of all accidents involving inadequate rescue capacity. However, if employers follow all other provisions of the rule, then there will be less need for rescue. As a result, this set of provisions will be necessary if other provisions are not available or are not followed 9 percent of the time, or if conditions change after the confined-space entry in ways that result in a need for rescue.

Equipment: These provisions cover the requirement that employers provide adequate lighting and other equipment needed for confined-spaces work as specified in § 1926.1204(d). Table IV–12 shows that if these provisions prevent 47 percent of the accidents for which they are potentially relevant, then the benefits will equal the costs, and if they prevent more than 47 percent of the accidents, the benefits will exceed the costs. However, as noted above, OSHA did not include many of the accidents that proper equipment would prevent, such as accidents caused by vehicles hitting persons working near a confined space or illnesses caused by improper clothing. As a result, it is likely that OSHA underestimated the number of fatalities and injuries prevented by proper equipment.

TABLE IV–12—COMPARISON OF BENEFITS ASSOCIATED WITH INDIVIDUAL COST CATEGORIES AND COSTS *

Cost provision	Number of fatalities potentially affected by provision (2006–2009)	Estimated number of fatalities per year potentially affected by provision	Monetized value of annual fatalities [a]	Estimated number of injuries per year potentially affected by provision	Monetized value of injuries [b]	Total monetized value of annual fatalities and injuries potentially affected by the provision	Costs of provision	Percentage of potential benefits needed to break even with costs [c] (percent)
All	30	7.5	$65,250,000	1125	$69,750,000	$135,000,000	$60,300,000	45
Evaluation and Classification	30	7.5	65,250,000	1125	69,750,000	135,000,000	3,100,000	2
Information Exchange	18	4.5	39,150,000	675	41,850,000	81,000,000	9,300,000	11
Permit System	22	5.5	47,850,000	825	51,150,000	99,000,000	4,200,000	4
Early Warning System and Atmospheric Testing or Monitoring	18	4.5	39,150,000	675	41,850,000	81,000,000	11,300,000	14
Ventilation and Hazard Isolation	22	5.5	47,850,000	487.5	51,500,000	99,000,000	2,800,000	3
Attendant	13	3.25	28,275,000	487.5	30,225,000	58,500,000	3,600,000	6
Rescue Capability	20	5	43,500,000	750	46,500,000	90,000,000	8,200,000	9
Training	29	7.25	63,075,000	1087.5	67,425,000	130,500,000	11,300,000	9
Equipment	3	0.75	4,350,000	112.5	6,975,000	13,500,000	6,3000,000	47

* In 2009 dollars.
[a] Based on an estimated value of $8.7 million per fatality avoided.
[b] Based on an estimated value of $62,000 per injury avoided.
[c] Costs of provision divided by total monetized value of fatalities potentially prevented by the provision.
* **Note:** OSHA did not apportion the benefits of a prevented fatality among the provisions that could prevent the fatality; instead, the Agency attributed the entirety of the benefits of a prevented fatality to each provision that could prevent the fatality.
Source: OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis.

5. Technological Feasibility

In accordance with the OSH Act, OSHA must demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. OSHA demonstrates that a standard is technologically feasible ''by pointing to technology that is either already in use or has been conceived and is reasonably capable of experimental refinement and distribution within the standards deadlines.'' *American Iron and Steel Inst.* v. *OSHA (Lead II),* 939 F.2d 975,

980 (D.C. Cir. 1991) (per curiam) (internal citation omitted). OSHA reviewed each of the requirements imposed by the final rule and determined that compliance with the requirements of the rule is technologically feasible for all affected industries, that employers can achieve compliance with all of the final requirements using readily and widely available technologies, and that there are no technological constraints associated with compliance with any of the final requirements.

Several factors support OSHA's determination regarding the technological feasibility of the final rule. First, OSHA concluded that compliance with existing § 1910.146 was technologically feasible when it promulgated those standards in 1993 (58 FR 4539), and that conclusion held true over OSHA's two decades of experience with that standard. Likewise, this conclusion holds true with respect to provisions in the final rule that OSHA based on the existing general industry standard. A number of commenters stated that they are complying with the general industry standard in construction operations, which also supports a finding of technological feasibility. (See *e.g.,* ID–047, –075, –086, –092, –120, –124, –180).

Second, the provisions in the standard not based on the existing standard are also technologically feasible. The new standard requires employers to identify confined spaces at their worksites, establish a written program and issue permits for qualifying confined spaces, exchange information on the hazards of permit spaces with other affected employers, train affected employees, provide for rescue and emergency services, and assign duties to authorized entrants, attendants, and supervisors. None of these requirements, including the new requirements not in § 1910.146, present any technological feasibility concerns. These provisions simply require observation of hazards, training, and communication among all parties, including employees and all employers at a worksite—all of which are clearly feasible.

In Section III of the preamble to the final rule, ''Summary and Explanation of the Final Rule,'' OSHA responded to issues associated with the technological feasibility of specific provisions. In that section of the preamble, OSHA discussed technological feasibility concerns raised by rulemaking participants and the technological feasibility of provisions that differ from the general industry rule, including the requirement for continuous monitoring of atmospheric hazards in final § 1926.1203(e)(2)(vi) and § 1926.1204(e)(1)(ii). In addressing potential concerns about the technological feasibility of continuous monitors that would be capable of identifying various types of atmospheric hazards, OSHA included an exception that applies if the employer can demonstrate that the appropriate devices are not commercially available for this purpose.

One commenter suggested that requirements to exchange information and coordinate entry operations represent ''an unnecessary burden'' and ''in some cases may be infeasible,'' which OSHA takes to mean technologically infeasible, for the homebuilding industry (ID–124). Although this commenter cited industry statistics indicating that homebuilders tend to be small businesses that rely on subcontractors to handle specialized tasks, the commenter failed to show how this situation renders multi-employer communication requirements of the rule technologically infeasible for that industry. OSHA does not mandate any particular equipment for coordinating communications, and the Agency did not find evidence in the record suggesting that the exchange of information and entry coordination, which OSHA believes already occurs in the course of regular communications conducted by employers on construction worksites, is infeasible. At a time when most individuals have mobile phones, remote communication should be possible in most locations. In any case, in construction work, home-building contractors are able to successfully communicate with a variety of specialists about what work needs to be done and at what time. Therefore, there should be no feasibility problems in communicating essential safety information in the same way.

There was only one other provision of the proposed standard that elicited concerns from industry stakeholders about technological feasibility. That provision, which appears as § 1926.1204(e)(1)(iii) of the final standard, requires that employers provide an early warning system that will detect non-isolated engulfment hazards as a part of the permit-required confined space program. Such hazards can result, for example, when runoff from a heavy storm upstream in a sewer flows downstream into the work area. As noted in the IMIS reports, an employee died in 2009 when a rainstorm sent water rushing into a 24-inch pipe inside which the employee was working. Other examples would be if sewage, sand, grain, or other ''flowable'' solid substances flow into the area in which an employee is working.

Two commenters questioned the availability of early warning system technology (ID–059 and –098). A third commenter (ID–216) raised similar objections and, in particular, expressed concerns about the technical demands imposed on the employer to account for all of the factors involved in properly positioning the system.

In response to these comments, OSHA observes that manufacturers have designed early warning systems for years to alert workers to migrating engulfment hazards, including migrating engulfment hazards present in a space subject to final § 1926.1204(e)(1) (see, for example, *http://www.memecosales.com/products/level/blok-aid/* or *http://www.flygt.com/en-us/Pumping/Products/Monitoring-and-Control-equipment/Pages/Alarm-telemetry.aspx*). The range of available early warning systems runs from customized high-flow warning devices to simple fluid-level meters with audible alarms. The wide availability and application of such systems attest to their affordability and practicability under a range of circumstances. OSHA also notes that, in a series of stakeholder meetings in October 2000, various participants discussed the range of early warning systems, including monitors, cameras, and attendants positioned upstream outside confined spaces (see transcripts of stakeholder meetings, available at *https://www.osha.gov/doc/reference_documents.html*). The commenters generally characterized the systems as easy to implement and commonly used.

Even though this technology is clearly available, the standard does not require employers to use a device such as the early warning system. An employer may determine that an effective compliance solution would simply be to position detection and monitoring devices to provide early warning, or to station an employee to accomplish that function. In any case, given the option of using an employee to provide direct observation as one potential method of fulfilling the requirement, there is no doubt that the requirement may be accomplished with existing technology.

In conclusion, employers can achieve compliance with all of the requirements of the final standard with readily and widely available technologies or through the use of human observers. To demonstrate technological feasibility, OSHA must establish a ''reasonable possibility that the typical firm will be able to . . . meet the [standard's

requirement] in most of its operations.'' *Lead II,* 939 F.2d at 980 (internal citation omitted). Given the wide availability of options for early warning systems, the final rule meets this legal test.

6. Costs of Compliance

Introduction

In this chapter, OSHA presents the estimated costs of the final rule for confined spaces in construction. These are the costs that employers would incur to achieve full compliance with the final rule, relative to the current baseline. They do not include costs employers incurred to achieve current compliance with the existing requirements.

Table IV–13 presents OSHA's estimate of the total annualized costs of the final rule by provision and by industry sector, expressed in 2009 dollars. As OSHA typically does, it annualized capital costs over the estimated useful life of the equipment, and annualized one-time costs over 10 years. Consistent with OMB's Circular A–4 (OMB, 2003), OSHA calculated annualized costs using two alternative discount rates: 7 Percent and 3 percent. As shown, OSHA estimated the total annualized cost of the final rule to be about $60.3 million using a discount rate of 7 percent, and $59.2 million using a discount rate of 3 percent.

TABLE IV–13—ANNUALIZED COMPLIANCE COSTS OF OSHA'S FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION, BY PROVISION

Provision or hazard control	7 Percent rate	3 Percent rate
Evaluation, Classification, and Notification	$12,363,600	$12,208,018
Classify	948,249	948,249
Notice	2,091,862	1,936,279
Information Exchange	9,323,489	9,323,489
Issue Permits, Verify Safety, Review Procedures	4,196,574	4,190,373
Annual Review	154,746	154,746
Issue Permits	2,710,594	2,710,594
Written Program	1,331,234	1,325,033
Ventilation and Hazard Isolation	2,830,611	2,748,652
Isolation	784,364	771,079
Vent	2,046,247	1,977,573
Atmospheric Monitoring	11,395,322	11,282,168
Test Prior/During	10,661,160	10,551,394
Calibrate	734,162	730,773
Standby Person	3,623,866	3,623,866
Rescue Capability	8,157,084	7,576,244
Rescue	5,745,876	5,379,002
Retrieval	2,411,208	2,197,241
Training	11,340,155	11,296,556
Training	5,696,017	5,676,653
Supervisor Training	5,644,139	5,619,903
Other Requirements	6,402,728	6,269,690
Clothing	2,744,697	2,744,697
Barriers	2,801,408	2,723,063
Communication Equipment	624,044	584,200
Lighting	183,363	171,656
Alarms	61,252	57,644
Total Compliance Costs	60,321,976	59,207,135

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

The structure of the equations which calculate the costs is the following equation:

$$TC = \sum_{k=1}^{27} \sum_{j=1}^{25} \sum_{i=1}^{3} NP_{ijk} \times NC_{ijk} \times H_{ijk} \times UC_{ijk}$$

Where TC = Total Cost, k subscripts each cost category, j subscripts each industry type, i subscripts the project size, NP is the number of projects in that size category, NC is the current non-compliance rate, H is the number of hours, and UC is the unit cost.

Using a discount rate of 7 percent, OSHA estimates that the annualized compliance costs for the major provisions of the final standard are as follows: Evaluation and classification of enclosed spaces, information exchange, and notification ($12.4 million); developing and reviewing written programs, issuing entry permits, and verifying the safety of confined spaces ($4.2 million); isolating hazards and providing sufficient ventilation ($2.8 million); conducting atmospheric monitoring ($11.4 million); having an attendant ($3.6 million); planning and providing rescue capability ($8.2 million); providing training ($11.3 million); and other requirements ($6.4 million).

Estimating Compliance Costs

The approach to compliance-cost estimation in this FEA follows the approach in the PEA and in the CONSAD analysis. However, the cost

estimates in this FEA changed relative to the PEA to reflect changing construction practices over time, changes from the proposed to the final rule (including more closely aligning the final rule with the confined-spaces rule for general industry), and OSHA's responses to comments on the proposal and on the PEA.

For each type of construction activity identified by the CONSAD expert panel, OSHA took an estimate of the total number of construction projects from the F.W. Dodge data (the same source used for the PEA) and applied a category-specific number of confined spaces per project to derive the number of confined spaces. OSHA then used the number of confined spaces along with other pertinent estimates to determine the number of affected workers, and applied unit-cost estimates to calculate the costs of each provision of the standard, taking into account current compliance. OSHA derived many of the costs of this final rule by multiplying hourly wages by the labor hours required to fulfill a given requirement. As previously noted, OSHA annualized equipment purchase costs based on the estimated useful life of the equipment, and annualized one-time expenditures over a 10-year period.

AGCA presented an alternative economic analysis, prepared by Dr. Helvacian, of the compliance costs of the proposed rule, stating that the analysis in the PEA ''must be updated for the most recent data on establishments, employees, wages and benefits, and for prices for construction machinery and equipment'' (ID–222). In this FEA, OSHA updated its analysis of compliance costs to reflect more recent data, when these data were available. Specifically, to account for changes in wages and prices over time, OSHA updated the wages and capital and equipment costs presented in the PEA to 2009 dollars based on the percentage change in the GDP price deflator from 2002 to 2009, published by the U.S. Commerce Department, Bureau of Economic Analysis.[52] Dr. Helvacian's economic analysis was based partially on a survey of AGCA's member employers. The survey respondents have an average of 98.8 confined spaces per job, with a median of 3 spaces per job. This large disparity between the average and the median suggests the possibility that there was widespread misunderstanding among the respondents regarding what constitutes a confined space. By comparison, the average number of confined spaces per project based on the CONSAD report is 5.7, with an average of 193 entries per project.[53] OSHA believes that it would be unsound to extrapolate the commenter's survey results, based on only 74 respondents and 5 categories of construction projects, to the entire construction industry. In contrast, CONSAD based its estimates on results stratified by 25 project categories organized by project size. Furthermore, OSHA notes that adjusting the estimated average number of confined spaces and entries to reflect the commenter's reported median estimate would reduce OSHA's estimated compliance costs.

OSHA chooses not to adopt the commenter's estimated number of confined spaces. OSHA believes that the research conducted by CONSAD continues to provide detailed information that is not available elsewhere (for example, information related to entries into confined spaces and the distribution of confined spaces across construction projects). Therefore, OSHA finds that the CONSAD report, with appropriate updates and adjustments for the changing rule provisions and industry practices, provides the best available data related to entries into confined spaces in construction, and continues to rely on data published in that report to estimate compliance costs.

Dr. Helvacian's analysis also suggested that the number of hours required to comply with the proposed rule was greater than that estimated in the PEA (ID–222). However, although the report provided some aggregate time estimates, they were not sufficiently detailed for OSHA to analyze the estimates by specific requirements. Furthermore, OSHA notes that Dr. Helvacian based the survey results on the AGCA members' understanding of the proposed rule rather than the final rule, which the survey's introduction described as ''complicated, costly to implement, and does not provide significant increases in safety above the existing general industry standard'' (ID–222). For these reasons, OSHA is not adjusting its time estimates based on the AGCA survey results.

OSHA received a number of comments stating that many construction contractors were already complying with the general industry standard. For example, an association of utility contractors commented that its members ''enter into confined spaces on a regular basis in the course of their construction operations. They have been using the General Industry Standard (29 CFR 1926.146) since it was issued in 1993 and have customized their confined space programs and training to comply with that standard'' (ID–075). Another commenter, a construction-safety consultant, stated that employers were already complying with a state standard on confined spaces, which the state based on OSHA's general industry standard (ID–047). Tom Skaggs, representing the Mechanical Contractors Association of America, testified that the industry was successfully protecting workers ''through voluntary compliance with OSHA's general industry standard'' (ID–210, Tr. p. 278; see also ID–180 for his written testimony). Other commenters also stated that much of the construction industry adheres to the general industry standard (*e.g.,* ID–086, –092, –120, –124).

Based on these comments, and in light of the changes from the proposed rule to the final rule that more closely align the final rule with the general industry rule, OSHA revised its estimated rates of current industry compliance upward in this FEA for many of the provisions of the final rule. Table IV–6, introduced earlier in Chapter 3 of this FEA, presents these revised compliance rates. Because the final rule requirements concerning information exchange, continuous monitoring, and early warning systems and rescue vary from the general industry rule, the Agency did not adjust the estimated compliance rates related to these provisions in this FEA.

To adjust compliance rates, OSHA used information on state confined-space standards for construction. The states that have confined space standards for construction are: California, Kentucky, Maryland, Michigan, Minnesota, Virginia, Washington, and Alaska. These eight states have different confined-space requirements that comply with some or all of the OSHA requirements in the final rule, depending on the state. OSHA assumed that the original CONSAD compliance rate would be applicable in states without state standards, and assumed full compliance with the provisions of the standards specific to each of these eight states. The content of the state construction standards varies by state, so OSHA calculated weighted average compliance rates for each provision of the standard based on the proportion of establishments in each state having that provision. As the record shows, this approach may underestimate the actual compliance rates since many construction employers have come into compliance with the general industry

[52] Source: *http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.*

[53] This estimate excludes single-family housing projects. OSHA added these projects to the analysis in this FEA.

standard, and, therefore, with provisions of this final rule, whether or not they are located in the states with confined-space standards for construction. These employers come into compliance with the general industry standard because, in part, they perform both general industry and construction work. OSHA also modified some compliance rates from the CONSAD report to account for large projects having greater compliance rates than smaller projects within the same activity type.

Table IV–14 presents the estimated unit costs associated with each requirement in the final rule. Following this table is a discussion of OSHA's estimated compliance costs by requirement.

TABLE IV–14—UNIT-COST ESTIMATES FOR CONTROLS NECESSARY TO ACHIEVE COMPLIANCE WITH THE FINAL STANDARD

Activity or equipment	Unit cost/useful life
Construction supervisor wage (including benefits)	$42.16 per hour.
Skilled worker wage (including benefits)	$29.60 per hour.
General construction employee wage (including benefits)	$24.93 per hour.
Clerical employee wage (including benefits)	$22.53 per hour.
Unskilled worker wage (including benefits)	$22.67 per hour.
Confined-space notification signs	$18.92/5 years.
Host employer/controlling contractor information exchange	8 minutes of supervisor time.
Controlling contractor/entry employer information exchange	20 minutes of supervisor time for each entity involved.
Controlling contractor/other worksite employer information exchange	5 minutes of supervisor time for 10 percent of employers.
Entry coordination	10 minutes of supervisor time for 3 supervisors per coordinated entry.
Written program	1 hour per project.
Issue permits/maintain records/review procedures	10 minutes of supervisor time and 5 minutes of clerical time per permit issued.
Implement and verify alternative entry procedures	5 minutes of supervisor time and 5 minutes of clerical time per non-permitted space entry.
Time to isolate a hazard (*e.g.,* with double block and bleed method, lockout/tagout system, etc.).	5 minutes skilled employee time.
Lock	$13.80/2 years.
Tag	$1.61 each.
Portable ventilation system	$1,332/5 years.
Operation and maintenance costs for ventilation system	Add 10% per year to cost of system.
Set up ventilation system	10 minutes skilled employee time.
Ventilate confined space prior to entry	45 minutes skilled employee time.
Set up atmospheric monitoring equipment	20 minutes skilled employee time per entry.
Atmospheric-monitoring equipment (three-gas monitor)	$1,000/5 years.
Atmospheric-monitor calibration test	1 calibration per 160 hours of use.
Attendant	1 additional construction employee for duration of entry for anywhere from 3 hours to 3,400 hours.
Establish rescue procedures	1 hour supervisor time per project.
Entry rescue equipment	$5,328.56 per set/5 years.
Non-entry rescue equipment	$3,248.54/20 years.
Rescue team training	For each team of 4 employees: 16 hours skilled worker time (4 hours per employee) plus 4 hours supervisor time; plus for 1 employee: 4 hours skilled worker time for CPR training.
Training for entrants and attendants	Entrants (3–75 workers per project): 0.25 hours construction worker time; attendants (2–6 workers per project): 0.25 hours construction worker time; plus 1.5 minutes supervisor time per trained worker and 1.5 minutes clerical time per worker.
Training program development	4 hours supervisor time plus 1 hour clerical time for program development plus 6 hours supervisor time for training plus 1 hour clerical time per project.
Disposable coveralls	$8.94 per set.
Traffic barricades (pair)	$165.64/3 years.
Barricade tape	$2.12 per 100 feet.
Sign	$18.92/5 years.
Installation of sign or barricade	5 minutes per sign or barricade.
Two-way radios	$214.13/3 years.
Safety lantern for emergency lighting	$19.04/3 years.
Air horn for emergency evacuation	$23.79/3 years.

Sources: Wage data from Bureau of Labor Statistics. Other data from CONSAD report, Tables 6.1, 6.2, D.1, and D.2; and OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

Evaluation and Identification, Information Exchange, and Notification

The proposed standard required employers to evaluate confined spaces and their hazards, and to classify them as one of several types of confined spaces. In the PEA, OSHA estimated that compliance with the requirements would primarily involve a supervisor's time to categorize the confined space and evaluate its hazards.

Many commenters found the proposed multiple classification system for confined spaces unnecessarily burdensome. One commenter stated that ''[t]he four new classifications . . . will require drastic changes to existing confined space programs at great financial expense to the construction industry'' (ID–124). Another commenter objected to ''the cost to the contractor for re-educating employees in the new terminology,'' and supported the continued use of the ''the existing

process'' in § 1910.146, the general industry standard (ID–035).

In contrast to the proposed standard, the final rule requires employers to evaluate confined spaces and their hazards (*i.e.,* determine whether a workspace is a confined space and identify the types of hazards that workers may encounter), and to identify those confined spaces that are permit spaces or covered by alternate procedures. This simplified requirement mirrors the requirements of OSHA's general industry standard for confined spaces. OSHA estimates that the time required to evaluate confined spaces as permit-required spaces would be substantially less than the time required to comply with the more complex proposed classification system, and, therefore, the Agency estimated an average time of about 12 minutes to evaluate a permit space and identify hazards. OSHA believes this estimate is appropriate given the many comments indicating that employers are already familiar with the general industry rule and its required classification process. For example, one commenter, which surveyed its members about the proposed standard, reported that ''identifying confined spaces [is] currently performed as part of normal business activities,'' and that ''within the past 15 years, many contractors have become accustomed to 29 CFR 1910.146 and have adjusted their safety programs to comply with this standard'' (ID–222).

For purposes of estimating the extent of current compliance, OSHA considers that projects in compliance with the proposed requirements to issue entry permits would also be in compliance with the final requirements for evaluating spaces as permit-required or not. Therefore, OSHA bases its compliance rates for these provisions on the compliance rates estimated for the provisions related to issuing entry permits. OSHA calculated the annual compliance cost for evaluating and classifying confined spaces by multiplying the supervisor's hourly wage rate by the number of hours per project required to identify and evaluate confined spaces, which can vary by project type. OSHA applied this total to the percentage of projects not already in compliance and summed across all projects. Using this approach, OSHA estimates an annualized cost of about $948,249 to comply with this requirement.

For example, to see how OSHA determined the cost of classification, we will examine one of the 25 types of projects: Construction on warehouses. Within this category there were 130 small projects, 220 medium projects, and 23 large projects.

The total cost for the large projects was derived by taking the number of projects (23) times the current non-compliance rate (42%) times the number of hours per project (1.5). This calculation yields a product of 14.49 hours. Multiplying that number by the unit cost ($42.16 per hour)—the cost of an hour of supervisor's time—yields $610.90, the cost of classification of large warehouse construction project confined spaces.

To determine the total cost of classification of all permit required confined spaces, the costs of all types of projects (small, medium, and large) for all 25 types of construction, weighted by each project-cell-types current non-compliance rate, are summed up. A total of 94 cells are added up to produce the total cost of classification.

The final rule includes specific requirements for employers at worksites with confined spaces to share information they may have about the hazards confronting their workers or other workers. One commenter stated that ''[i]t is essential to add in the costs to implement this proposed rule by all the employers on each construction site . . . , '' and that the ''estimated time necessary to attend to each confined space on each construction project by the proposed controlling contractor is 6 to 8 hours'' (ID–100). In providing this estimate, the commenter delineates several requirements that fall under the duties of entry employers and host employers. The commenter correctly notes the requirement that the controlling contractor exchange information with other worksite employers; however, by counting requirements for entry employers with the requirements for controlling contractors, the commenter overstates the time burden on controlling contractors. Another comment, in the report prepared by Dr. Helvacian, noted that employers had concerns about the costs of complying with requirements for ''information gathering'' and ''information sharing and coordination'' (ID–222). Although OSHA believes that employers on construction sites currently conduct the information exchange described in this chapter as part of their usual and customary business practices, in this FEA (unlike in the PEA) the Agency included estimated costs for information-exchange requirements, as follows.

Under final § 1926.1203(h)(1) and (h)(2), the host employer and the controlling contractor must exchange information about known permit spaces, such as location, past experiences with hazards in the spaces, and other pertinent information. Neither the host employer nor the controlling contractor has to enter the confined spaces to obtain this information. OSHA estimates that supervisors for the host employer and the controlling contractor will engage in eight minutes of conversation per project to fulfill this information-exchange requirement.

Under final § 1926.1203(b)(2), (h)(2), (h)(3), (h)(5), and (i), controlling contractors and entry employers must exchange information about permit spaces and their hazards. They also must share most of this information with employee representatives. OSHA estimates the information exchange requirement can be fulfilled with an average of 20 minutes of communication (one pre-entry and one post-entry conversation, each lasting 10 minutes) per project between a supervisor for the controlling contractor and an entry employer plus a worker-authorized representative of that entry employer

Under final § 1926.1203(h)(2), before entry operations begin, the controlling contractor must provide information about the permit-required spaces to employers with employees whose activities could foreseeably expose them to a hazard in the permit-required space. OSHA expects that employers on a worksite will not usually have employees engaged in work that could foreseeably expose them to such a hazard. To estimate the cost of compliance with this provision, OSHA anticipates that the controlling contractor's supervisor will engage in one 5-minute conversation with 10 percent of all non-entry employers on a worksite. OSHA calculated the number of non-entry employers on a worksite from estimates made by CONSAD of the number of non-entry workers on projects, assuming an average employer size of 20 employees.

Under final § 1926.1203(h)(4), the controlling contractor must coordinate entry operations when multiple employers enter simultaneously or when an employer makes an entry while other work performed at the site (outside the confined space) may result in a hazard in the confined space. To obtain the cost of compliance with this information-exchange provision, OSHA estimates that the controlling contractor and two employers will engage in one 10-minute conversation per coordinated entry. To estimate the number of coordinated entries, OSHA used estimates in the CONSAD report on the number of simultaneous entries per project. OSHA assumes that all estimated simultaneous entries will require coordination, and estimates that

10 percent of all entries will be subject to hazards as a result of work outside the confined space.

Although the CONSAD report did not provide direct estimates of compliance rates for the information-exchange requirements, OSHA believes that these compliance rates are similar to the compliance rates associated with the requirements for notification to non-entrant employees (ID–003, Table D.2). OSHA also believes it is reasonable to assume that projects in compliance with requirements addressing notification to non-entrant employees would also be in compliance with requirements addressing employer-to-employer communication.

OSHA calculated the annual compliance cost for information exchange on each project by multiplying the supervisor's hourly wage rate by the number of hours per project for each type of required information exchange. To estimate the cost of information exchange between host employers and controlling contractors, OSHA modeled eight minutes of three supervisors' time per project. Similarly, to estimate the cost of information exchange between controlling contractors and entry employers, OSHA modeled 20 minutes of supervisor time for the controlling contractor, a worker-authorized representative, and each of the entry employers on the project. To estimate the cost of information exchange between the controlling contractor and employers on the worksite having employees whose work may result in a hazard in the confined space, OSHA modeled five minutes of supervisor time for the controlling contractor and 10 percent of non-entry employers present. Finally, to estimate the cost of coordinating simultaneous entries, OSHA modeled 10 minutes for 3 supervisors (*i.e.,* the controlling contractor and two entry employers) for each such entry. For all of these calculations, OSHA applied the totals to the percentage of projects not already in compliance (*i.e.,* 1 minus the compliance rate) and summed these values across all projects. Using this approach, OSHA estimates an annual cost of approximately $9.3 million to comply with the information-exchange requirements in the final rule.

One commenter stated that the requirements to exchange information and coordinate entry operations represent ''an unnecessary burden'' and ''in some cases may be infeasible'' (ID–124). OSHA addresses this comment as a technological-feasibility issue in the section on technological feasibility, but the commenter's unsupported argument also would fail if directed at economic infeasibility. Although this commenter cited home-building industry statistics indicating that homebuilders tend to be small businesses that rely on subcontractors to handle specialized tasks, the comment did not explain how this condition renders the multi-employer and communication requirements of the rule economically infeasible for that industry.

Under final § 1926.1203(b) and (c), employers must inform exposed employees of the existence of permit spaces and the dangers they pose. In the PEA, OSHA estimated that complying with this requirement involved an average of five minutes per notified worker. In the FEA, the Agency no longer includes such notification costs. Rather, OSHA followed the PEA in assuming that employers will achieve compliance with the notification requirement by posting a sign at each confined space. OSHA estimates that signs have a five-year life, and that installation takes five minutes per sign. The Agency calculates the cost of signs as the unit cost of one sign times the number of signs per project, and calculates the installation costs as five minutes (1/12 of an hour) times the unskilled worker's hourly wage times the number of signs per project. OSHA applies these totals to the percentage of projects not already in compliance, summed across all projects. Treating the installation cost as a recurring cost, and treating signs as a capital cost with a useful life of five years, OSHA estimates that the annualized cost of signs, including materials and labor, to be $2.0 million.

Two stakeholders representing utility contractors, in similarly worded comments, stated that notifying non-authorized entrants ''could mean informing 25–100 or more employees on the jobsite, which would be extremely time consuming'' (ID–124 and ID–075). However, OSHA believes that, beyond posting the signs, there should be no additional costs associated with the requirement to inform exposed employees of the existence of permit spaces and the danger posed by unauthorized entry. OSHA notes that, under 29 CFR 1926.21(b)(2), employers must already provide general training to employees engaged in construction work to ensure that they recognize the hazards on the worksite, including applicable signage warning of hazards. As one commenter stated, ''In reference to warning employees not to attempt an unauthorized rescue, it should be part of every construction employee's training . . . because this warning applies to all construction rescue operations'' (ID–075).

In summary, OSHA estimates the total annualized costs related to the final requirements for evaluation and classification, information exchange, and notice to employees to be $12.1 million.

Written Program, Permit Issuance, and Annual Review

The proposed standard required that employers on worksites with confined spaces either develop a confined-space program and maintain a copy of the written program, or, alternatively, maintain a copy of the standard at the site. For analytical purposes, OSHA assumed that employers would choose the least-cost alternative and maintain a copy of the standard at the site in lieu of developing a written program. In contrast, final § 1926.1203(d) is similar to the general industry provision in that it requires entry employers to develop and implement a written permit-space program, and final § 1926.1204(n) requires employers to review the permit-space program.

In this FEA, OSHA estimates one hour of supervisor time per project to write a program. OSHA based this estimate on the paperwork-burden determination made in the proposed rule for developing such a program, which no commenter disputed. OSHA also notes the wide availability of written model permit-space programs provided by government entities, trade associations, and others, that employers could adapt with a limited number of revisions to comply with the new standard (see, for example, *http://www.purdue.edu/rem/home/booklets/ConSpProg.pdf*). OSHA calculated compliance costs associated with the requirement to develop a written program as a one-time cost consisting of one hour times the supervisor's hourly wage times the number of projects. OSHA applied this total to the percentage of projects not already in compliance, and annualized the costs using assumptions on the share of projects that are new to a contractor each year—yielding a total annualized cost of approximately $1.3 million. OSHA notes that, in practice, an employer is likely to develop one, somewhat generic, program, and then apply it later to other projects. Given the ready availability of model programs online and elsewhere, adapting one with limited revisions to a company's particular needs is not especially difficult or time consuming. In addition, following the PEA, OSHA estimates five minutes of supervisor time per program for the annual review, and computes the cost for this review as five minutes (1/12 of an hour) times the supervisor's hourly wage times the number of

projects not already in compliance—yielding an estimated annual compliance cost of about $155,000.

Final § 1926.1205 requires employers to issue entry permits, and final § 1926.1206 specifies the information employers must include in the permits. In the PEA, OSHA estimated that compliance with the requirements to issue written entry permits when necessary, and to review procedures periodically, would primarily involve supervisor time; OSHA estimated that 15 minutes of supervisor time per permit issued was sufficient for this purpose. For this FEA, OSHA estimated compliance costs associated with issuing permits separately from the compliance costs associated with the annual review of the permit-space program. Following the analysis by CONSAD, OSHA estimates that compliance with these provisions will involve 10 minutes of supervisor time to issue a permit, 5 minutes of clerical time to write the permit, as well as 5 minutes of supervisor time to provide written verification regarding the safety of non-permit spaces, and 5 minutes of clerical time for recordkeeping for non-permit spaces. The total estimated annual costs in this final standard associated with issuing entry permits and written verifications of safety are $2.7 million.

In summary, OSHA estimates that the annualized costs of the final requirements to provide a written program, issue written permits, and conduct an annual review of the program total to $4.2 million.

One commenter stated that the requirement to develop a confined-space program might require the assistance of a third party, and asserted that program development could cost contractors $10,000 (ID–112). However, the commenter did not explain the basis for the $10,000 estimated cost of program development, and did not specify which elements of ''program development'' were in its estimate. For example, OSHA separately estimated the costs of providing a written confined-space program and developing a training program. Furthermore, OSHA notes that the final rule does not require employers to engage a third party in the development of a confined-space program. Indeed, a variety of examples of confined-space programs are widely available on the Internet, which employers may adapt for their needs; in addition, OSHA will provide a small entity compliance guide to aid employers in developing such programs.

Isolating Hazards and Providing Ventilation

Final §§ 1926.1203(e) and 1926.1204 refer to isolating hazards and providing ventilation to ensure safe entry conditions for permit-required spaces and confined spaces covered by alternate procedures. As in the PEA, OSHA estimates that isolating hazards and providing ventilation would require the time of a skilled construction employee, additional costs for locks and/or tags, the purchase costs, and the operating and maintenance costs for a portable ventilation system. OSHA included the unit costs for these items in Table IV–14 above. OSHA received no specific comments on the preliminary compliance costs in the PEA related to these provisions. While recognizing that isolation costs may vary according to the hazards isolated, OSHA nevertheless considers the cost estimates in the PEA for blanking and bleeding and lockout/tagout to be reasonable estimates of isolation costs; therefore, OSHA applied the same cost methodology to this section of the final standard.

OSHA estimated isolation costs by multiplying the skilled worker hourly wage times 10 minutes (⅙ or an hour) times the number of entries per project requiring blanking, plus the skilled worker hourly wage times 5 minutes (1/12 of an hour) times the number of entries per project requiring double block and bleed, plus the skilled worker hourly wage times 10 minutes (⅙ of an hour) times the number of entries per project requiring lockout/tagout, plus the cost of tags and locks annualized over a 2-year useful life. OSHA applied these totals to the percentage of projects not already in compliance, summed across all projects. Similarly, OSHA estimated ventilation costs as the purchase costs and operating and maintenance costs for portable ventilation systems applied to the percentage of projects not already in compliance, summed across all projects. OSHA based this estimate on a unit cost of about $1,332 per portable ventilation system, annualized over a useful life of 5 years, and 10 minutes (⅙ of an hour) of setup time multiplied by the unskilled worker hourly wage. The Agency applied these totals to the percentage of projects not already in compliance, summed across all projects. Based on this method, OSHA estimates total annualized costs related to isolating hazards and providing ventilation to be $2.5 million for this final rule.

Monitoring, Early Warning Systems, and Attendants

Final §§ 1926.1203(e) and 1926.1204(e) set forth requirements for monitoring hazards, which generally include continuous monitoring, or periodic monitoring of sufficient frequency, to ensure acceptable entry conditions, as well as an early warning system for non-isolated engulfment hazards. The monitoring provision reflects the requirements in § 1910(d)(5) of the general industry standard, while the requirement for an early warning system is unique to the construction standard (that is, not included in the general industry standard).

Costs related to monitoring and early warning consist of both equipment costs and labor costs associated with attendants and other employees who perform these functions. The following paragraphs include a discussion of the costs related to attendants and other employees who perform monitoring and early warning for hazards under specified conditions.

One commenter stated that the early warning system for engulfment hazards will be ''quite expensive for a contractor to purchase, install and maintain with calibration'' (ID–098), while some other commenters suggested that the requirement for an early warning system would force employers to hire more employees for the purpose of monitoring for these hazards (ID–059 and ID–112). OSHA provides a choice to employers for how they comply with the early warning requirement: They may use early-warning equipment or they may rely on personnel to provide warning. OSHA expects that employers will do whatever is less costly; in some cases this will be a worker exclusively assigned to monitoring duty, and in other cases it will be cheaper to use a monitoring device. OSHA calculated the costs based on the use of personnel to perform this function because it is simpler to calculate on a per-instance basis; however, OSHA does not expect that the cost of purchasing a device would be significantly higher on a per-instance basis when employer can use the device over a number of projects and over several years. In some cases the equipment cost will be lower than the labor estimates included in this analysis.

OSHA expects that incumbent workers can discharge the early warning-monitoring duty, and estimates the total cost as the construction worker's hourly wage multiplied by the number of entry hours per project, which varies by project. OSHA applied these totals to the percentage of projects

not already in compliance, summed across all projects. Based on this method, OSHA estimates total annualized costs of $3.6 million to comply with the requirement to provide an early warning system.

To assign costs to the use of equipment required to monitor atmospheres in confined spaces, OSHA estimated in the PEA that gas monitors have an average useful life of 2.5 years, and that their unit cost (in 2009 dollars) is $1,660. One commenter (ID–222, p. 12) stated that an average monitor would cost ''around $2,000,'' and that an employer would need to have two units and additional sensors due to reliability problems with such equipment. The Agency notes that employers in general industry have successfully used monitoring equipment under the general industry standard, and the Agency believes that reliable equipment is commercially available. Moreover, based on OSHA research, the price of a gas monitor has fallen to around $1,000, and industry practice suggest that a gas monitor has a useful life of 5 years; these are the estimates used in this FEA.

OSHA estimated 20 minutes of supervisor time to set up the monitoring equipment, taking into account the possibility that, in some cases (with a test occurring after 160 hours of use—a conservative estimate according to industry experts). OSHA calculated the costs related to monitoring as the equipment cost ($1,000) annualized over a useful life of 5 years, plus operating and maintenance costs equal to 5 percent of equipment costs, plus calibration costs based on use time, plus observation and testing costs based on the duration of entries, which varies by project. OSHA applied these totals to the percentage of projects not already in compliance, summed across all projects. Based on these calculations, OSHA estimates that annualized compliance costs for monitoring total to $11.3 million.

A commenter stated that employers had concerns about the recordkeeping cost of retaining monitoring data for 30 years (ID–222). However, OSHA notes that although employers must make exposure records for employees exposed to hazards available for 30 years under pre-existing OSHA requirements (*i.e.,* 29 CFR 1910.1020), this final rule does not require that routine monitoring records be kept for 30 years.

Final § 1926.1204(f) requires employers to post an attendant outside the permit space for the duration of authorized entry operations, and final § 1926.1209 sets forth the duties of attendants, which include assessing the entrants and the conditions inside and outside the permit space to detect prohibited conditions and summoning rescue and other emergency services. The requirement for an attendant is similar to a requirement in the general industry standard. In this FEA, as in the PEA, OSHA estimates that the cost of posting an attendant is the wage rate of a skilled construction worker multiplied by the time that entrants spend in the confined space.

Rescue Capability

The proposed standard sets forth several requirements for non-entry and entry rescue, including provisions for preparing, protecting, and training entry-rescue employees. In the PEA, OSHA estimated that compliance with rescue-related provisions would have a total annualized cost of approximately $9.6 million, including costs for non-entry rescue and in-house entry rescue teams for many construction projects. One comment characterized the estimated costs related to rescue ''planning and compliance'' as ''drastically low and inaccurate'' (ID–124). Several commenters seized on the proposed requirement to summon an entry-rescue team whenever an employer initiates a non-entry rescue. For example, at the hearing, testimony from the National Utility Contractors Association suggested that the proposed rule required employers to have ''a standby entry rescue team that can respond to the incident in a timely manner'' (ID–210, Tr. p. 177). Another commenter stated that the rescue requirements are ''unreasonable and burdensome'' (ID–075). This commenter, representing utility contractors, elaborated on its concerns:

> It is not always practical or feasible to have a rescue team onsite and it is very expensive to have a team on standby unless it is the local fire/police rescue squad. The proposed rule should be revised to permit entry into the average PRCS without having a rescue team onsite or on standby. Most fire department rescue squads can handle the majority of confined space rescues, such as manhole, pipe, vault and underground tank rescues. However, due to liability, most fire departments will not assume the responsibility of being the *designated* rescue team on standby, although they will respond to a call and perform the rescue. In our opinion it is safer to have professionals respond than to depend on employees who have had some training and probably no experience handling an actual rescue. *Id.* (emphasis in original).

Other commenters suggested that rescue equipment costs could be high. One commenter stated: ''At the very least, the equipment would include a tri-pod, retrieval device, ventilation equipment, air monitors, two air-supplied respirators, air cart and air bottles or air compressor designed to provide breathing air, stokes stretcher and necessary equipment to package the victim and much more'' (ID–075). Another commenter stated that the ''rescue equipment required could vary greatly. A Confined Space Rescue Team Kit, consisting of a tripod, rescue harnesses/helmets, blower, rope, hardware, software, etc., can easily cost upwards of $17,000 per set'' (ID–112).

In response to these and other comments, OSHA revised the requirements for rescue and emergency services for the final rule. For example, OSHA dropped the requirement in proposed § 1926.1211(h)(2) that required employers to summon an entry-rescue team every time they initiated non-entry rescue. OSHA also clarified the Agency's preference for non-entry rescue, which typically consists of a retrieval system and is, therefore, less expensive than entry rescue. Moreover, it appears that some of the commenters mistakenly included costs for equipping contracted rescue services (rather than in-house services of employees) when asserting that OSHA's estimates were too low; employers would not incur such costs as the result of this final rule, and OSHA, therefore, did not include these costs in this analysis.

Final § 1926.1204(i) requires employers to develop and implement procedures for: Providing rescue and emergency services, including procedures for summoning emergency assistance in the event of a failed non-entry rescue; rescuing entrants from permit spaces; providing necessary emergency services to rescued employees; and preventing unauthorized personnel from attempting a rescue. Paragraph (a) of § 1926.1211 specifies the criteria according to which employers can choose rescue and emergency services; § 1926.1211(b) specifies requirements for employers who choose to designate their own employees as the rescue service; and § 1926.1211(c) sets forth requirements related to retrieval systems used to facilitate non-entry rescue from permit spaces. These provisions are similar to the general industry standard for confined spaces. For cost-estimation purposes in the PEA, OSHA judged that entry employers would designate employees who use self-contained breathing apparatuses to provide entry rescue services. OSHA also determined that the rescue-related compliance costs incurred by these employers include expenditures for training and equipment. The Agency used the time of

a skilled construction worker to estimate the labor costs associated with training four employees in rescue operations, conducting practice rescue operations, and training one employee in CPR. Separately, OSHA estimated costs of retrieval lines for employers electing non-entry rescues. Thus, for the proposed rule, the Agency estimated costs for entry rescue and non-entry rescue separately.

Final § 1926.1211(c) requires employers to use non-entry rescue, such as retrieval equipment, unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. Therefore, for this FEA, OSHA estimated that employers that use non-entry rescue (retrieval lines) would not also designate employees for entry rescue for the same project, but would instead continue to rely solely on emergency services in the event of non-entry rescue failure. OSHA estimated a unit cost per entrant of $3,250 for retrieval systems. The cost of retrieval systems includes the cost of harnesses, which, according to one commenter, cost $100 each and have a useful life of 5 years (ID–112). However, harnesses are a small part of a retrieval system's total cost. In addition to the equipment cost of retrieval lines for each entrant, employers using non-entry rescue would incur additional costs, including one hour of supervisor time to establish rescue procedures and one hour of practice annually for a supervisor and team of 4 non-entry rescuers.

OSHA judges that, when employers do not employ non-entry rescue, they will rely on in-house rescue teams only when entrants use a self-contained breathing apparatus, and will rely on outside rescue service in other situations. OSHA estimates one hour of supervisor time to establish rescue procedures for all employers electing entry-rescue procedures. Following the PEA, OSHA modeled additional costs only for employers using in-house rescue teams; these costs include one hour of practice annually for a supervisor and a team of four rescuers, as well as costs for annual training, CPR training, and entry-rescue equipment.

OSHA did not receive any comments addressing its method of estimating costs for employers using in-house rescue services.

In the PEA, OSHA estimated that confined-space entry-rescue team kits will cost approximately $5,330 per unit (in 2009 dollars). While rescue team kits as such are not required by the standard, they are a simple way for an employer to obtain the equipment *typically* necessary for an adequate rescue team. OSHA concurs with the comment that unit costs for these rescue kits can vary considerably, but a review of commercially available kits shows that the estimate developed by OSHA is reasonable. For example, one commercially available system priced at $2,735 includes a tripod rescue/retrieval system, blower, gas monitor with calibration capability, and a harness. Another system, priced at $4,450, includes a two-way communication system, talk box, cable splitter, operator headset, face masks, speaker harnesses, cables, hooks, and connectors. Confined-space rescue kits are available at a price range of $3,000–$4,500. These kits typically include a wide range of items such as a tripod with bag, spine splint, collar kit, 4:1 rescue kit, full-body harnesses, tag line, belay line, anchor sling, continuous-loop sling, handled ascender, helmets, ascending stirrup, rope pad, rope guard, and carabiners.[54] Based on these prices, and given that OSHA estimated costs for communication devices, ventilation equipment, and gas monitors elsewhere in this analysis, OSHA believes that its estimate of $5,330 for a rescue kit more accurately reflects the requirements of the standard than does the estimate of $17,000 suggested by the commenter. Indeed, OSHA's cost estimate may be an overestimate of the true cost to the extent that a particular confined space covered by the final standard may not require some of the equipment included in commercially available kits.

The final rule requires non-entry rescue unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. To calculate compliance costs, OSHA estimated that employers will use non-entry rescue with retrieval lines for projects whenever required under the standard, and will select entry rescue for all other projects. OSHA estimated that, for all projects, one hour of supervisor time is necessary to set up procedures, and estimates this cost as the supervisor's hourly wage, applied to all projects not already in compliance. In addition, OSHA estimated costs for projects that use non-entry rescue based on the equipment costs for retrieval lines ($3,250) multiplied by the number of entrants on a project. The Agency annualized this cost over a useful life of 20 years, with the total applied to the percentage of projects not already in compliance, adjusted for the number of projects with retrieval lines onsite but not properly used. OSHA estimated four hours of skilled worker time per year to capture the cost of non-entry rescue practice, and applied this total to the percentage of projects not already in compliance.

OSHA estimated costs for projects using entry rescue as the cost of providing in-house rescue for a subset of projects. For all other projects, OSHA estimated that employers will rely on local emergency responders to provide entry rescue, as most employers who have programs do today. For projects using in-house rescue, OSHA calculated the cost of 2 days of entry-rescue training for 4 skilled construction workers (16 hours times 4 workers times the skilled construction worker's hourly wage), 4 hours of CPR training for one skilled worker, and a set of rescue equipment annualized over a useful life of 5 years. OSHA estimated 4 hours of skilled worker time per year to capture the cost of non-entry rescue practice, and applied this total to the percentage of projects not already in compliance. Based on this method, OSHA estimates that the annualized costs for the requirements in the final standard to provide rescue capability total to $8.3 million.

Training

Final § 1926.1207 sets forth requirements for training entrants, attendants, and supervisors to ensure safe performance of the duties assigned under the standard.

In the PEA, OSHA estimated that annualized training costs associated with the proposed standard would total to $8.1 million. As stated in the PEA, this total reflected an adjustment to the estimates in the CONSAD report based on comments received from potentially affected small businesses, and the findings and recommendations made by a panel of reviewers. Several commenters stated that training under the proposed rule would be expensive. However, since the final rule represents a significant simplification of the requirements in the proposed rule, OSHA reduced the cost estimates accordingly. OSHA further notes that, although it anticipates that most affected employers will train workers once using a procedure that covers many topics, and conduct refresher training as appropriate along with training newly arrived employees, the Agency modeled training costs on a per-project basis to be consistent with the rest of the CONSAD-derived analysis. This assumption, along with the unit-

[54] See *http://www.majorsafety.com/index.cfm/product/450_105/confined-space-tripod-rescue-system-with-bw-gasalert-max-xt-and-blower.cfm*; *http://www.rocknrescue.com/acatalog/Con-Space-Rescue-Kit-3.html#aCSI_2dRES_2dKIT3*; *http://www.rocknrescue.com/acatalog/Skedco-Evac-Confined-Space-Rescue-Kit.html.*

cost figures used, results in a large and inflated estimate of the training costs.

OSHA notes that the duties of entrants and attendants as set forth in the final standard are now similar to the duties of comparable employees covered by the general industry standard, and that many commenters stated that they were already complying with the general industry standard. In addition, 29 CFR 1926.21(b), a decades-old provision applicable to confined spaces in construction, already requires some training on the characteristics of confined spaces and associated safety practices. Many comments echoed the statement that ''affected construction workers are already extremely familiar with the existing general industry standard'' (ID–148). Therefore, consistent with the observations above, OSHA believes that the training required for employees will be less extensive than was suggested by the Agency's preliminary training cost estimates.

For this final analysis, OSHA estimates that the costs associated with training entrants and attendants would primarily involve supervisor and employee time necessary for the supervisor to conduct the training. For this FEA, OSHA estimated that employers will spend four hours of supervisor time plus an hour of clerical time developing or revising the training programs for entrants, attendants, and supervisors. OSHA estimates 15 minutes of training for entrants and attendants (1 supervisor and 1 clerical worker are modeled to provide training to a class of 10 entrants). OSHA also includes 1 hour of supervisor training, and 6 minutes of supervisor time to provide the training, per project (again, assuming a class size of 10). As a reminder, most supervisors are already familiar with the general industry rule and, therefore, with many provisions of this final rule. Based on these underlying unit costs, OSHA estimates that the annualized training-related costs under the final standard will be $11.3 million.

Other Compliance Costs

Other compliance costs associated with the final standard include providing disposable coveralls when necessary, emergency lights, traffic barriers, and communication equipment. OSHA identified these costs in the PEA and received no specific comments on the compliance costs for these requirements. Therefore, the Agency used the same methodology in this FEA to estimate these costs.

OSHA modeled the clothing costs based on workers wearing disposable coveralls. The Agency multiplied the number of worker entries requiring disposable coveralls for each project type (by activity and size) by the number of projects in that category that are not currently in compliance and by the unit-cost for disposable coveralls of $8.94 per set. The number of entries requiring this clothing is a subset of the entire number of entries. The estimated annual cost for disposable overalls comes to $2.7 million.

To calculate the costs of emergency lights, OSHA estimated the number of simultaneous entries for each project type. OSHA then multiplied that number by the unit cost of a lantern, $19.04, and annualized it over a useful life of 3 years. Finally, OSHA multiplied the cost per project by the number of projects not in compliance for each category, and summed across categories. The resulting cost is about $193,000 a year.

To calculate the costs of traffic barriers, OSHA added costs for traffic barricades and barricade tape. The Agency estimated that 50 percent of all projects require these controls. OSHA then annualized the unit cost of $165.64 for a traffic barricade over 3 years, and the unit cost of barricade tape at $2.12. The total annualized cost of these barriers comes to $2.9 million.

To calculate the costs of communication equipment, OSHA assumes that employers use two-way radios. OSHA estimated using this equipment for each simultaneous entry. The useful life of this equipment is typically three years. OSHA multiplied annualized costs by the number of simultaneous entries per project and by the number of projects not in compliance per category, and summed the results across categories. The total annual communication costs come to about $55,000.

The total annualized costs for these other requirements come to $6.5 million.

Respiratory Protection

In this FEA, OSHA did not include costs for respiratory protection for two reasons. First, OSHA designed the final rule to prevent an employee's exposure to confined-space hazards whenever possible, thereby obviating the need for respirators and other PPE in those cases; the provisions of the final rules designed to prevent such exposure include training, information exchanges, and a program that ensures appropriate testing and evaluation, monitoring, planning, and control of the space to prevent unauthorized entry (including unauthorized rescues). This approach is fundamental to OSHA's regulatory policy, which recognizes a hierarchy of controls consisting of engineering controls when possible, then work-practice controls when engineering controls are not possible, and finally personal protective equipment only when the other controls are not feasible.[55] Second, consistent with the design of the final rule, none of the safety benefits estimated in this FEA were attributable to respiratory protection. The Agency believes that it would be inconsistent to attribute costs, but not benefits, to respiratory protection (unless, of course, the respiratory protection requirement generates costs but not benefits).

This treatment of respiratory protection in the FEA is fundamentally different from OSHA's earlier treatment of respiratory protection in the PEA. In the PEA, OSHA included costs for employers to provide respiratory protection. These costs included the purchase of the appropriate type of respirator (*e.g.,* self-contained breathing apparatus, powered air purifying respirators, dust masks), time and materials for cleaning respirators, and other necessary equipment such as a

[55] The following excerpt from the preamble to OSHA's Cadmium standard at 57 FR 42101, 42340 (Sept. 14, 1992) provides a typical summary of OSHA's concerns about reliance on PPE and the importance of the hierarchy of controls:

Engineering controls are preferred by OSHA for a number of reasons. Engineering controls are reliable, provide consistent levels of protection to large numbers of workers, can be monitored continually and inexpensively, allow for predictable performance levels, and can remove toxic substances from the workplace. Once removed, the toxic substances no longer pose a threat to the employee. Moreover, the effectiveness of engineering controls does not depend to any marked degree on human behavior, and . . . the operation of equipment is not as vulnerable to human error as is the use of personal protective equipment . . .

Respirators are another, important method of compliance. However, to be used effectively, respirators must be individually selected; fitted and periodically refitted; conscientiously and properly worn; regularly maintained; and replaced as necessary. In many workplaces, these preconditions for effective respirator use are difficult to achieve with sufficient consistency to provide adequate protection. The absence of any of these preconditions can reduce or eliminate the protection the respirator provides to the employee.

Because there are so many ways that respirators can be rendered ineffective and so many potential problems associated with their use, OSHA has traditionally relied less on respirators than on engineering and work-practice controls in the hierarchy of controls. For example, where work is strenuous, the increased breathing resistance of certain types of respirators may contribute to an employee's health problems and may reduce the acceptability of wearing a respirator to employees. Although experience in industry shows that most healthy workers do not have physiological problems wearing properly chosen and fitted respirators, common health problems can cause difficulty in breathing while an employee is wearing a respirator.

compressor or air supply, depending on the type of confined space and the type of work performed in the space. Furthermore, the Agency used a relatively low rate of current respirator compliance in the PEA, resulting in significant estimated costs (approximately $11.6 million in 2009 dollars) for respirator protection.

The revised treatment of respirator-protection costs in this FEA remedies several issues retrospectively identified in the PEA. First, OSHA designed the final rule to avoid respirator use by relying instead on training, information exchanges, and a program that ensures appropriate testing and evaluation, monitoring, planning, and control of the space to prevent unauthorized entry (including unauthorized rescues). The costs estimated for respirator protection in the PEA failed to fully appreciate the underlying logic of the proposed rule to avoid respirator use whenever possible. Second, OSHA did not attribute any benefits to respirator protection in the PEA. Removing the respirator-protection costs in the FEA resolves the inconsistent treatment of respirator costs and respirator benefits in the PEA.

The third issue concerns the relatively low rate of respirator compliance used to estimate the costs of respirator protection in the PEA. These rates reflected the findings of the 1994 CONSAD report. As noted earlier in this FEA, some commenters questioned the continued relevance of the CONSAD report produced in 1994 (ID–222, p. 20). In light of these comments, OSHA reexamined the CONSAD report and concluded that, generally, while it is the best available data source for this rulemaking, the Agency had to make adjustments in particular areas to reflect updated information. One of these areas involves CONSAD's outdated assumptions and data regarding respirator use. Based on surveys conducted in 1993, the CONSAD report assumed a high rate of non-compliance with the Respiratory Protection standard that existed at the time, and the PEA included significant respirator costs under the assumption that the new confined-spaces standard for construction would have a significant impact on respirator use. However, the CONSAD assumption did not account for the publication of OSHA's significantly revised Respiratory Protection standard in 1998 (63 FR 1152 (Jan. 8, 1998)). In that 1998 rulemaking, OSHA reviewed its enforcement data for the years 1990–1996, acknowledged that many of the respiratory-protection programs were deficient, and designed the new standard to improve employer's selection, maintenance, fit testing, and training for proper respirator use, and ''to provide employers with the tools needed to implement an effective respiratory protection program'' (63 FR 1160). The rulemaking increased monitoring requirements and awareness and understanding of the respirator requirements. In light of these revisions to the Respirator Protection standard subsequent to the CONSAD report, OSHA concluded that the new standard would significantly enhanced employer compliance with the respiratory-protection requirements by reducing misinterpretations and inconsistencies (63 FR 1158). Enhanced compliance increased the respiratory protection provided to workers, making it unnecessary to rely on the provisions of this final confined-space rulemaking to protect workers from respiratory hazards.

The new confined-spaces standard does not require any additional respirator use beyond that already required by the existing Respiratory Protection standard. OSHA believes that the much-reduced need for respirator protection in confined spaces in the future (as a result of this final rule) will not increase, and could arguably decrease, future respirator use in confined spaces in construction relative to current respirator use.

Annualized Costs by NAICS Industry

Based on the cost estimates for the individual provisions contained in this final standard, Table IV–15 shows, by affected industry engaged in construction activity, annualized compliance costs for all establishments, annualized compliance costs for all small entities (as defined by the Small Business Act and the Small Business Administration's (SBA's) implementing regulations; see 15 U.S.C. 632 and 13 CFR 121.201), and annualized compliance costs for all very small entities (those with fewer than 20 employees). OSHA annualized the costs presented in Table IV–15 using the discount rate of 7 percent, which is, along with a discount rate of 3 percent, recommended by OMB in Circular A–4.

TABLE IV–15—ANNUALIZED COSTS, BY INDUSTRY, FOR ALL CONSTRUCTION ENTITIES AFFECTED BY THE FINAL CONFINED-SPACE STANDARD FOR ALL ESTABLISHMENTS, SMALL ENTITIES, AND VERY SMALL ENTITIES

NAICS	Industry	All establishments	Small entities (SBA-defined)	Very small entities <20 employees)
221310	Water Supply and Irrigation Systems	$51,635	$14,299	$8,738
236115	New Single-Family Housing Construction (except Operative Builders).	813,505	578,128	351,852
236116	New Multifamily Housing Construction (except Operative Builders).	955,662	533,573	174,635
236118	Residential Remodelers	8,277,207	7,853,017	4,342,753
236210	Industrial Building Construction	2,331,853	527,967	175,989
236220	Commercial and Institutional Building Construction	11,862,610	5,868,843	1,747,634
237110	Water and Sewer Line and Related Structures Construction	8,687,099	4,956,577	1,400,582
237130	Power and Communication Line and Related Structures Construction.	2,125,111	697,984	105,944
237310	Highway, Street, and Bridge Construction	15,614,845	4,915,948	1,061,237
237990	Other Heavy and Civil Engineering Construction	1,405,363	513,278	145,898
238190	Other Foundation, Structure, and Building Exterior Contractors	1,627,010	1,069,906	428,448
238210	Electrical Contractors and Other Wiring Installation Contractors	1,627,010	877,857	330,259
238220	Plumbing, Heating, and Air-Conditioning Contractors	2,471,532	1,450,572	551,757
238310	Drywall and Insulation Projects	1,627,010	686,015	203,983
238910	Site Preparation Contractors	844,522	559,703	211,959
	Total	60,321,976	31,103,667	11,241,667

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

Time Distribution of Compliance Costs

Table VI–4 provides the estimated stream of unannualized compliance costs for 10 years following the effective date of the final standard.

TABLE VI–4—DISTRIBUTION OF COMPLIANCE COSTS BY YEARS

Year 1	$ 93,068,644
Year 2	50,514,323
Year 3	50,950,150
Year 4	55,365,256
Year 5	50,950,150
Year 6	76,163,971
Year 7	55,801,082
Year 8	50,514,323
Year 9	50,950,150
Year 10	55,365,256

Source: Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

7. Economic Feasibility Analysis and Regulatory Flexibility Determination

Introduction

In this chapter, OSHA investigates the economic impacts of its final standard on confined spaces in construction. This impact investigation has two overriding objectives: (1) To determine whether the final rule is economically feasible for all affected industries, and (2) to establish if the Agency can certify that the final standard will not have a significant economic impact on a substantial number of small entities.

Economic Feasibility

Section 6(b)(5) of the OSH Act states: ''The Secretary . . . shall set the standard which most adequately assures, *to the extent feasible,* on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. . . .[56] [Emphasis added.] OSHA interpreted the phrase ''to the extent feasible'' to encompass economic feasibility. The U.S. Court of Appeals for the D.C. Circuit supported this interpretation in a 1974 decision.[57] The court noted that ''Congress does not appear to have intended to protect employees by putting their employers out of business . . .,''[58] and then proceeded to define the concept of ''economic feasibility'' and to indicate its boundaries:

> Standards may be economically feasible even though, from the standpoint of employers, they are financially burdensome and affect profit margins adversely. Nor does the concept of economic feasibility necessarily guarantee the continued existence of individual employers. It would appear to be consistent with the purposes of the Act to envisage the economic demise of an employer who has lagged behind the rest of the industry in protecting the health and safety of employees and is consequently financially unable to comply with new standards as quickly as other employers. As the effect becomes more widespread within an industry, the problem of economic feasibility becomes more pressing.[59]

Thus, according to the court, OSHA standards would satisfy the economic-feasibility criterion even if they impose significant costs on regulated industries and force some marginal firms out of business, so long as they did not cause massive economic dislocations within a particular industry or imperil the existence of the industry.[60] The implication for analysis of economic impacts is that OSHA must determine whether its standards will eliminate or alter the competitive structure of an industry, not to determine whether any individual plants may close.

In practice, the economic burden of an OSHA standard on an industry—and whether the standard is economically feasible for that industry—depends on the magnitude of compliance costs incurred by establishments in that industry and the extent to which they are able to pass those costs on to their customers. To determine whether a rule is economically feasible for an industry, OSHA begins with two screening tests to consider minimum threshold effects of the rule under two extreme cases: (1) All costs are passed through to customers in the form of higher prices, and (2) firms absorb all costs in the form of reduced profits. In the former case, the immediate impact of the rule would appear as increased industry revenues. In the absence of evidence to the contrary, OSHA generally considers a standard to be economically feasible for an industry when the annualized costs of compliance are less than a threshold level of one percent of annual revenues. Retrospective studies of previous OSHA regulations show that potential impacts of such a small magnitude are unlikely to eliminate an industry or significantly alter its competitive structure.[61]

In the second case, the immediate impact of the rule would appear as reduced industry profits. Again, in the absence of evidence to the contrary, OSHA generally considers a standard to be economically feasible for an industry when the annualized costs of compliance are less than a threshold level of 10 percent of annual profits. OSHA's choice of a threshold level of 10 percent of annual profits is low enough that even if the industry incurred all compliance costs upfront, the costs could still be met from profits without needing to resort to the credit market. Assuming a 7 percent discount rate and a 10-year annualization period, the compliance costs would equal about 70 percent of first-year profits; the industry could absorb these costs from profits without resorting to credit markets. The industry analysis refers to an average firm and its threshold level of profits. Some firms in any industry are below-average, and under-capitalized, poorly run, saddled with lawsuits, or operating in a shrinking market. OSHA cannot guarantee that not a single firm in any industry will become unprofitable in the first year because of this rule, but rather that the vast majority of firms will have their profits impacted by 10 percent or less.

To implement the economic feasibility screening tests described above, OSHA first compared, for each affected industry, annualized compliance costs to annual revenues and profits per (average) affected establishment. The results for all affected establishments in affected industries are in Table IV–14. Shown in the table for each affected industry are the total number of affected firms (entities) and establishments, the percentage of firms affected, annualized costs per affected establishment, annual revenues per establishment, annual profits per establishment, annualized compliance costs as a percentage of annual revenues, and annualized compliance costs as a percentage of annual profits.

To estimate costs for different NAICS construction industries, OSHA developed ''crosswalks'' from project types used in the CONSAD report to the appropriate NAICS. The Agency then used data from the *2007 Statistics of U.S. Businesses* to obtain information on the number of establishments and receipts (revenues), and data from the *Internal Revenue Service Corporation Source Book* to obtain the average of 2003–2007 profit rates for these sectors. Subsequently, OSHA allocated confined-space projects to sectors and size classes on the assumption that smaller establishments are less likely to work in such spaces than larger ones, and on an allocation rule whereby the Agency assigned each establishment a project before assigning any establishment a second project (for analytical tractability). Finally, OSHA

[56] 29 U.S.C. 655(b)(5).

[57] *Indus Union Dep't* v. *Hodgson,* 499 F.2d 467 (D.C. Cir. 1974).

[58] *Id.* at 478.

[59] *Id.*

[60] *Id.; see also Am. Iron and Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991); *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1265 (D.C. Cir. 1980).

[61] See OSHA's Web page, *http://www.osha.gov/dea/lookback.html#Completed*, for a link to all completed OSHA lookback reviews.

aggregated compliance costs by industry, divided by the number of affected establishments in the industry to derive average compliance costs per affected establishment by industry, and compared the quotient to average annual establishment revenues and profits by industry.

Note that, in any industry sector in construction, the final standard will affect directly only a small percentage of firms and establishments in any given year. Many business entities in affected industries do not regularly work with confined spaces. As demonstrated in Tables IV–16 and IV–3, respectively, the final standard will affect only about 6.3 percent of firms and 7.2 percent of establishments in the affected industries. OSHA estimates that the average cost of complying with the final standard, per affected establishment, will be less than $2,000 annually (compared with average revenues of about $2.6 million). The estimated costs of compliance represent about 0.08 percent of revenues and 1.6 percent of profits, on average, across all affected entities.

As previously noted, OSHA established a minimum threshold level of annualized costs, equal to 1 percent of annual revenues or 10 percent of annual profits, below which the Agency concluded that costs are unlikely to threaten the economic viability of an affected industry. The key result from Table IV–16, for purposes of determining economic feasibility, is that annualized compliance costs do not represent more than 0.48 percent of revenues for affected firms in any industry. Furthermore, there is only one industry, NAICS 236210 (Industrial Building Construction), in which annualized compliance costs for affected firms exceed 10 percent of annual profits. For that industry, annualized compliance costs are equal to 10.56 of annual profits. However, the Agency believes that the final standard would still be clearly feasible for this industry because, first, the final standard affects only 1.84 percent of all firms in that industry each year (see Table IV–4). Second, OSHA believes that firms engaged in confined-spaces work are larger and more profitable than average, so profit losses to them are likely to be less than modeled. Third, OSHA does not believe that industries will absorb all or most of the costs of the final standard in lost profits. The price elasticity of demand in construction is sufficiently inelastic to enable affected firms to substantially offset variable compliance costs through minor price increases—here, less than 0.5 percent—without experiencing any significant reduction in total revenues or in net profits. Consequently, the Agency concludes that the final standard for confined spaces in construction is economically feasible for all affected industries.[62]

TABLE IV–16—POTENTIAL ECONOMIC IMPACTS FOR ENTITIES AFFECTED BY THE FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION

[2009 dollars]

NAICS industry code	Industry name	Affected		Affected firms as a percentage of total (percent)	Annualized compliance costs per affected firm	Average revenues per firm ($ thousands)	Average profits per firm ($ thousands)	Annualized costs as a percentage of affected firm revenues (percent)	Annualized costs as a percentage of affected firm profits (percent)
		Firms	Establishments						
221310 ...	Water Supply and Irrigation Systems.	22	65	0.61	$2,347	$2,235	$132	0.11	1.78
236115 ...	New Single-Family Housing Construction (except Operative Builders).	1,075	1,321	1.75	757	1,691	77	0.04	0.99
236116 ...	New Multifamily Housing Construction (except Operative Builders).	830	883	19.22	1,151	5,774	262	0.02	0.44
236118 ...	Residential Remodelers	9,405	9,602	9.44	880	757	34	0.12	2.57
236210 ...	Industrial Building Construction ..	71	106	1.84	32,843	6,865	311	0.48	10.56
236220 ...	Commercial and Institutional Building.	5,401	6,408	13.08	2,196	9,519	431	0.02	0.51
237110 ...	Water and Sewer Line and Related Structures Construction.	2,579	2,765	18.85	3,368	3,787	227	0.09	1.49
237130 ...	Power and Communication Line and Related Structures Construction.	127	341	2.49	16,733	6,968	417	0.24	4.01
237310 ...	Highway, Street, and Bridge Construction.	3,486	4,275	31.83	4,479	10,230	612	0.04	0.73
237990 ...	Other Heavy and Civil Engineering Construction.	778	965	14.96	1,806	4,633	277	0.04	0.65
238190 ...	Other Foundation, Structure, and Building Exterior Contractors.	1,163	1,182	20.40	1,399	1,243	57	0.11	2.46
238210 ...	Electrical Contractors	2,046	2,680	2.59	795	1,635	74	0.05	1.07
238220 ...	Plumbing, Heating, and Air-Conditioning Contractors.	2,264	2,934	2.28	1,092	1,688	65	0.06	1.68
238310 ...	Drywall and Insulation Projects ..	1,640	2,284	7.53	992	1,941	89	0.05	1.12
238910 ...	Site Preparation Contractors	225	255	0.55	3,753	1,647	79	0.23	4.77

[62] In Chapter 6 of this FEA, OSHA explained why it was not including costs for respiratory protection as part of the estimated costs of the final standard. The Agency notes that this feasibility determination would not change with respect to any affected industry even if OSHA attributed to the final standard the respiratory-protection costs included in the PEA. Using the PEA assumptions, and updating unit-cost information for half masks and HEPA filters (based on currently available online price quotes), OSHA finds that none of the annualized costs for any NAICS code exceed the Agency's threshold of presumptive feasibility of one percent of revenues. The annualized costs for only one NAICS code, 236210 (Industrial Building Construction), exceed the threshold of presumptive feasibility of 10 percent of annual profits. The overall annualized costs for this NAICS code would total roughly $2.8 million after including the costs for respiratory protection; this figure represents 0.57 percent of annual revenue and 12.6 percent of annual profit for this industry. However, for the reasons stated above, the Agency believes that the final standard would be feasible for this industry even after including the respiratory-protection costs.

TABLE IV–16—POTENTIAL ECONOMIC IMPACTS FOR ENTITIES AFFECTED BY THE FINAL STANDARD FOR CONFINED SPACES IN CONSTRUCTION—Continued

[2009 dollars]

NAICS industry code	Industry name	Affected		Affected firms as a percentage of total (percent)	Annualized compliance costs per affected firm	Average revenues per firm ($ thousands)	Average profits per firm ($ thousands)	Annualized costs as a percentage of affected firm revenues (percent)	Annualized costs as a percentage of affected firm profits (percent)
		Firms	Establishments						
	Total	31,112	36,066	6.27	1,939	2,559	121	0.08	1.60

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

Regulatory Flexibility Screening Analysis

To determine if the Assistant Secretary of Labor for Occupational Safety and Health can certify that the final standard for confined spaces in construction will not have a significant economic impact on a substantial number of small entities, the Agency applied long-standing screening tests to consider minimum threshold effects of the final standard on small entities. The minimum threshold effects for this purpose are annualized costs equal to one percent of annual revenues, or annualized costs equal to five percent of annual profits, applied to each affected industry. OSHA applied these screening tests both to small entities and to very small entities. For purposes of certification, affected small entities or very small entities in any affected industry cannot exceed the minimum threshold effects.

Table IV–17 shows that the annualized costs of the standard do not exceed one percent of annual revenues for small entities in any affected construction industry, but they do exceed five percent of annual profits for small entities in two construction industries—NAICS 236210 (Industrial Building Construction) and NAICS 238910 (Site Preparation Contractors). Table IV–18 shows that the annualized costs of the standard exceed one percent of revenues and five percent of annual profits for very small entities in NAICS 236210 (Industrial Building Construction), and exceed five percent of annual profits for very small entities in two other construction industries—NAICS 237130 (Power and Communication Line and Related Structures) and NAICS 238910 (Site Preparation Contractors). OSHA is, therefore, unable to certify that the final standard will not have a significant economic impact on a substantial number of small entities in construction, and must prepare a Final Regulatory Flexibility Analysis (FRFA) (see Chapter 8 below).

TABLE IV–17—POTENTIAL ECONOMIC IMPACTS FOR SMALL ENTITIES AFFECTED BY THE FINAL STANDARD FOR CONFINED SPACES

[2009 dollars]

NAICS industry code	Industry name	Affected firms	Average compliance costs per affected firm ($)	Average revenues per firm ($ thousand)	Average profits per firm ($ thousand)	Costs as a percentage of affected firm revenues	Costs as a percentage of affected firm profits	Cost as a percentage of overall category firm revenues	Costs as a percentage of overall category firm profits
221310 ...	Water Supply and Irrigation Systems.	16	894	713	42	0.13	2.13	0.00	0.01
236115 ...	New Single-Family Housing Construction (except Operative Builders).	942	614	1,255	57	0.05	1.08	0.00	0.02
236116 ...	New Multifamily Housing Construction (except Operative Builders).	719	742	3,600	163	0.02	0.46	0.00	0.08
236118 ...	Residential Remodelers ...	9,384	837	736	33	0.11	2.51	0.01	0.24
236210 ...	Industrial Building Construction.	24	21,999	2,827	128	0.78	17.18	0.01	0.11
236220 ...	Commercial and Institutional Building.	4,398	1,334	4,950	224	0.03	0.60	0.00	0.06
237110 ...	Water and Sewer Line and Related Structures Construction.	2,248	2,203	2,462	147	0.09	1.50	0.02	0.25
237130 ...	Power and Communication Line and Related Structures Construction.	95	7,347	3,012	180	0.24	4.08	0.00	0.08
237310 ...	Highway, Street, and Bridge Construction.	2,738	1,795	4,304	258	0.04	0.70	0.01	0.19
237990 ...	Other Heavy and Civil Engineering Construction.	579	884	2,085	125	0.04	0.71	0.00	0.08
238190 ...	Other Foundation, Structure, and Building Exterior Contractors.	1,100	973	936	43	0.10	2.27	0.02	0.44
238210 ...	Electrical Contractors	1,424	616	1,037	47	0.06	1.31	0.00	0.02
238220 ...	Plumbing, Heating, and Air-Conditioning Contractors.	1,700	853	1,130	44	0.08	1.96	0.00	0.03
238310 ...	Drywall and Insulation Projects.	1,119	613	1,127	52	0.05	1.19	0.00	0.06

TABLE IV–17—POTENTIAL ECONOMIC IMPACTS FOR SMALL ENTITIES AFFECTED BY THE FINAL STANDARD FOR CONFINED SPACES—Continued

[2009 dollars]

NAICS industry code	Industry name	Affected firms	Average compliance costs per affected firm ($)	Average revenues per firm ($ thousand)	Average profits per firm ($ thousand)	Costs as a percentage of affected firm revenues	Costs as a percentage of affected firm profits	Cost as a percentage of overall category firm revenues	Costs as a percentage of overall category firm profits
238910 ...	Site Preparation Contractors.	167	3,352	1,223	58	0.27	5.74	0.00	0.02
	Total	26,653	1,167	1,533	71	0.08	1.64	0.00	0.09

*Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis—Safety.

TABLE IV–18—POTENTIAL ECONOMIC IMPACTS FOR VERY SMALL ENTITIES (FEWER THAN 20 EMPLOYEES) AFFECTED BY THE FINAL STANDARD FOR CONFINED SPACES

[2009 dollars]

NAICS industry code	Industry name	Annual number of affected firms	Average compliance costs per affected firm ($)	Average revenues per affected firm ($ thousand)	Average profits per affected firm ($ thousand)	Costs as a percentage of affected firm revenues	Costs as a percentage of affected firm profits	Cost as a percentage of overall category firm revenues	Costs as a percentage of overall category firm profits
221310	Water Supply and Irrigation Systems.	11	794	532	31	0.15	2.54	0.00	0.01
236115	New Single-Family Housing Construction (except Operative Builders).	580	607	977	44	0.06	1.37	0.00	0.01
236116	New Multifamily Housing Construction (except Operative Builders).	271	644	1,650	75	0.04	0.86	0.00	0.06
236118	Residential Remodelers.	7,104	611	545	25	0.11	2.47	0.01	0.18
236210	Industrial Building Construction.	8	21,999	1,471	67	1.45	31.92	0.00	0.08
236220	Commercial and Institutional Building.	1,327	1,317	2,273	103	0.06	1.28	0.00	0.05
237110	Water and Sewer Line and Related Structures Construction.	642	2,182	1,105	66	0.20	3.30	0.01	0.19
237130	Power and Communication Line and Related Structures Construction.	17	6,232	945	57	0.66	11.02	0.00	0.05
237310	Highway, Street, and Bridge Construction.	601	1,766	1,814	109	0.10	1.63	0.01	0.12
237990	Other Heavy and Civil Engineering Construction.	166	879	1,007	60	0.09	1.46	0.00	0.06
238190	Other Foundation, Structure, and Building Exterior Contractors.	706	607	552	25	0.11	2.40	0.01	0.32
238210	Electrical Contractors	544	607	575	26	0.11	2.33	0.00	0.02
238220	Plumbing, Heating, and Air-Conditioning Contractors.	655	842	622	24	0.14	3.51	0.00	0.03
238310	Drywall and Installation Projects.	336	607	599	27	0.10	2.21	0.00	0.04
238910	Site Preparation Contractors.	64	3,312	681	33	0.49	10.18	0.00	0.02
	Total	13,032	863	827	38	0.10	2.27	0.00	0.07

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis—Safety.

8. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996 and 2010, requires that an agency prepare a final regulatory flexibility analysis for any rule expected to have a significant economic impact on a substantial number of small entities (5 U.S.C. 601–612). Under the provisions of the law, such an analysis must contain:

1. A description of the impact of the rule on small entities;

2. A statement of the need for, and objectives of, the rule;

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the

proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

4. A statement of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

5. A description, and estimate, of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

6. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements, and the type of professional skills necessary for preparation of the report or record; and

7. A description of the steps the agency took to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and why the agency rejected each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities.

1. A Description of the Impact of the Final Rule on Small Entities

As shown in Table IV–19, the estimated total annualized cost of the final standard for all affected small entities in construction (as defined by SBA) is $31.1 million. Also shown in that table are annualized costs per affected small entity by industry. These costs per affected small entity range from $613 for NAICS 238310 (Drywall and Insulation Projects) to $21,999 for NAICS 236210 (Industrial Building Construction). The average yearly cost per affected small entity is $1,167.

To assess the potential economic impact of the final rule on affected small entities, OSHA calculated the ratios of these annualized compliance costs to yearly profits and to yearly revenues. These percentages for each construction industry are in Table IV–17 (see Chapter 7 of this FEA). As shown, among small entities potentially affected by the final rule, the annualized cost of the rule is equal to approximately 0.07 percent of annual revenues. In no construction industry does the annualized cost of the rule for affected small entities exceed 0.7 percent of annual revenues. Accordingly, on average, prices for affected small entities in construction would have to increase by about 0.08 percent to completely offset the cost of the final rule. For affected small entities in the most impacted industry, NAICS 236210 (Industrial Building Construction), prices would have to increase by about 0.8 percent to completely offset the cost of the final rule.

Only to the extent that such price increases are not possible would there be any effect on the average profits of affected small entities. Even in the unlikely event that entities could not pass the costs of the final rule through in the form of higher prices, the entities could absorb the costs completely through a reduction in profits of 1.64 percent, on average, for affected small entities (as shown in Table IV–17). In all but two of the affected industries, the affected small entities could absorb the compliance costs completely through an average reduction in profits of less than 5 percent; the reduction in profits would not exceed 17.2 percent for affected small entities in any of the construction industries, again assuming these entities could not pass through the costs.

To further ensure that OSHA fully analyzed and considered the potential impacts on small entities, the Agency separately examined the potential impacts of the final standard on very small entities, defined as those entities with fewer than 20 employees. As shown in Table IV–20, OSHA estimated the total annualized cost of the final standard for all affected very small entities in construction to be $11.2 million. Also shown in that table are annualized costs per affected small entity by industry. These costs per affected small entity range from $607 for several construction industries to $21,999 for NAICS 236210 (Industrial Building Construction). The average yearly cost per affected small entity is $862.

To assess the potential economic impact of the final standard on very small entities, OSHA calculated the ratios of the annualized costs of the final rule to yearly profits and to yearly revenues. These percentages for each affected construction industry are in Table IV–18. As shown, among very small entities potentially affected by the final rule, the annualized cost of the rule is equal to approximately 0.10 percent of annual revenues. In no construction industry does the annualized cost of the rule for affected very small entities exceed 1.45 percent of annual revenues. Accordingly, on average, prices for affected very small entities in construction would have to increase by about 0.10 percent to completely offset the cost of the final rule. For affected very small entities in the most impacted industry, NAICS 236210 (Industrial Building Construction), prices would have to increase by about 1.45 percent to completely offset the cost of the final rule.

TABLE IV–19—ANNUALIZED COMPLIANCE COSTS ASSOCIATED WITH THE FINAL CONFINED-SPACES STANDARD FOR SMALL ENTITIES, BY NAICS INDUSTRY

[2009 dollars]

NAICS industry code	Industry name	Affected firms	Affected establishments	Affected firms as a percentage of total (percent)	Annualized compliance costs	Cost per firm
221310	Water Supply and Irrigation Systems	16	18	0.5	$14,299	$894
236115	New Single-Family Housing Construction.	942	953	1.5	578,128	614
236116	New Multifamily Housing Construction.	719	728	17.1	533,573	742
236118	Residential Remodelers	9,384	9,468	9.4	7,853,017	837
236210	Industrial Building Construction	24	24	0.7	527,967	21,999
236220	Commercial and Institutional Building	4,398	4,463	10.9	5,868,843	1,334
237110	Water and Sewer Line and Related Structures Construction.	2,248	2,272	16.8	4,956,577	2,205

TABLE IV–19—ANNUALIZED COMPLIANCE COSTS ASSOCIATED WITH THE FINAL CONFINED-SPACES STANDARD FOR SMALL ENTITIES, BY NAICS INDUSTRY—Continued

[2009 dollars]

NAICS industry code	Industry name	Affected firms	Affected establishments	Affected firms as a percentage of total (percent)	Annualized compliance costs	Cost per firm
237130	Power and Communication Line and Related Structures Construction.	95	112	1.9	697,984	7,347
237310	Highway, Street, and Bridge Construction.	2,738	2,784	26.8	4,915,948	1,795
237990	Other Heavy and Civil Engineering Const..	579	584	11.6	513,278	886
238190	Other Foundation, Structure, and Building Exterior Contractors.	1,100	1,112	19.5	1,069,906	973
238210	Electrical Contractors	1,424	1,446	1.8	877,857	616
238220	Plumbing, Heating, and Air-Conditioning Contractors.	1,700	1,722	1.7	1,450,572	853
238310	Drywall and Insulation Projects	1,119	1,130	5.3	686,015	613
238910	Site Preparation Contractors	167	169	0.4	559,703	3,352
	Total	26,653	26,985	5.4	31,103,667	1,167

Source: U.S. Department of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis-Safety.

TABLE IV–20—ANNUALIZED COMPLIANCE COSTS ASSOCIATED WITH THE FINAL CONFINED-SPACES STANDARD FOR VERY SMALL ENTITIES, BY NAICS INDUSTRY

[2009 dollars]

NAICS industry code	Industry name	Affected firms	Affected establishments	Affected firms as a percentage of total	Annualized compliance costs ($)	Cost per firm ($)
221310	Water Supply and Irrigation Systems	11	11	0.3	8,738	794
236115	New Single-Family Housing Construction.	580	580	1.0	351,851	607
236116	New Multifamily Housing Construction.	271	271	7.2	174,635	644
236118	Residential Remodelers	7,104	7,105	7.3	4,342,753	611
236210	Industrial Building Construction	8	8	0.2	175,989	21,999
236220	Commercial and Institutional Building	1,327	1,329	3.9	1,747,634	1,317
237110	Water and Sewer Line and Related Structures Construction.	642	642	5.7	1,400,582	2,182
237130	Power and Communication Line and Related Structures Construction.	17	17	0.4	105,944	6,232
237310	Highway, Street, and Bridge Construction.	601	601	7.5	1,061,237	1,766
237990	Other Heavy and Civil Engineering Const.	166	166	3.8	145,898	879
238190	Other Foundation, Structure, and Building Exterior Contractors.	706	706	13.5	428,448	607
238210	Electrical Contractors	544	544	0.8	330,259	607
238220	Plumbing, Heating, and Air-Conditioning Contractors.	655	655	0.7	551,757	842
238310	Drywall and Insulation Projects	336	336	1.8	203,983	607
238910	Site Preparation Contractors	64	64	0.2	211,959	3,312
	Total	13,032	13,035	2.9	11,241,667	863

Only to the extent that such price increases are not possible would there be any effect on the average profits of affected very small entities. Even in the unlikely event that the entities could not pass through the costs of the final rule in the form of higher prices, small affected entities could absorb the costs completely through an average reduction in profits of 2.27 percent (as shown in Table IV–18). In all but three of the affected industries, the affected small entities could absorb the compliance costs completely through an average reduction in profits of less than 5 percent; the reduction in profits would not exceed 32 percent for affected small entities in any of the construction industries, again assuming that no costs could be passed through.

In practice, given the small incremental increases in prices potentially resulting from compliance with the final standard and the lack of readily available substitutes (including foreign competition) for the products and services provided by the covered construction industry sectors, OSHA believes demand to be sufficiently inelastic in each affected industry to enable small and very small entities to substantially offset variable compliance costs through minor price increases

without experiencing any significant reduction in total revenues or in net profits.

Further, it is important to note that cost assignment to entities by size is approximate, and in some instances larger firms may bear the burden, so the impacts on individual small entities is suggestive only, not definitive. Indeed, the limitations of available economic data and the Dodge report data make it impossible to assign small projects to small firms in a way that represents economic reality. Because OSHA did not assign fractions of projects to firms, it is likely that the Agency overestimated the costs of the final rule on small and very small entities. Accordingly, OSHA believes that it overstated its estimates of impacts on small entities.

With this important caveat, the Agency notes that there are industries in which impacts are above the conventional thresholds of 1 percent of revenue and 5 percent of profit for some small and very small entities. However, only a few firms account for the impacts as shown from the fact that the costs are negligible when expressed as a percentage of overall revenues and profits for the industry-size class (see the last two columns of Table IV–17 and Table IV–18).

2. A Statement of the Need for, and Objectives of, the Rule

The primary objective of the final rule is to provide an increased degree of occupational safety for employees performing construction work in confined spaces. Another objective of the final rule, in support of the primary objective, is to provide updated, clear, and comprehensive safety standards regarding construction work in confined spaces to the relevant employers, employees, and interested members of the public. The estimated 5.2 fatalities and 780 injuries annually that the final rule would prevent (assuming full compliance) demonstrate the need for the final rule.

The legal basis for the rule is the responsibility given the Department of Labor through the Occupational Safety and Health (OSH) Act of 1970. The OSH Act authorizes and obligates the Secretary of Labor to promulgate mandatory occupational safety and health standards as necessary ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). Additional legal authority for this final rule includes 29 U.S.C. 653, 655(b), and 657; and 40 U.S.C. 3701.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

In addition to the issues raised by the SBREFA panel, SBA's Office of Advocacy provided recommendations for OSHA to consider (OSHA–2007–0026–0119.1). The Agency provides the following responses to these recommendations (quoted verbatim):

SBA Recommendation 1: While the proposed rule is much improved from the draft version of the rule reviewed during the SBREFA process, it is still very complicated and difficult to understand. Advocacy recommends that OSHA try to further streamline the rule and harmonize it as much as possible with the existing general industry standard (or consider adopting a single rule for both industries). Advocacy notes that many employers operate on work sites that include both general industry and construction confined spaces and employees may encounter both types of confined spaces in close proximity. As many of the SERs pointed out to the SBAR Panel, having two separate standards could double the cost of their safety and training programs (especially if they contract out these services) and cause unnecessary confusion on the job site. Further, the distinction between ''maintenance'' and ''construction'' work in various facilities is often unclear. Having two different standards increases the complexity of compliance and could ultimately increase risk. This was, and remains, a key concern of the SERs.

OSHA's Response: When possible, OSHA adapted requirements in the general industry confined spaces standard to construction using parallel language. For example, § 1926.1205, Permitting process, in the final standard contains provisions virtually identical to those in § 1910.146(e), Permit system, in the general industry standard, rather than retaining the distinct classification system that OSHA proposed. However, the final standard for confined spaces in construction bears important distinctions from the general industry standard due to:

- Advances in safety systems (for example, monitoring procedures that detect increases in atmospheric hazards, as required in § 1926.1204(c)(5));
- Unique conditions associated with construction, such as greater emphasis on assessing hazards at sewer worksites and the need for information exchange in a complex multi-employer environment;
- Requests from stakeholders and commenters to allow greater flexibility for employers, such as permitting employers to enter a confined space under the alternative procedures specified by final § 1926.1203(e) if they isolate physical hazards within a space, or permitting employers to suspend a permit (rather than cancelling it) in response to certain temporary changes in conditions;
- Improvements in language for clarity and enforcement considerations.

SBA Recommendation 2: Advocacy is concerned about the host-employer and controlling-contractor provisions of the proposed rule and remains apprehensive about OSHA's imposition of legal obligations on employers for employees who are not their own. This policy seems to emanate from OSHA's *Multi-Employer Citation Policy,* which has never been promulgated as a rule and whose legal status has been called into question in the recent *Secretary of Labor* v. *Summit Contractors, Inc.* decision. Advocacy filed a similar comment about the host-contractor provisions in OSHA's proposed Electric Power Transmission rule. Some of the key concerns of small businesses are that host employers may not even be engaged in construction work (and therefore have no expertise on confined spaces), and that contractors may be working in remote locations with no interaction or oversight. Advocacy appreciates that OSHA has tried to limit the scope of this provision by only requiring host-employers or controlling contractors to provide information they actually possess (as opposed to having to obtain information they do not already have); however, these provisions are highly controversial and are opposed by many small businesses. Advocacy recommends that OSHA eliminate these requirements from the rule.

OSHA's Response: The U.S. Court of Appeals for the Eighth Circuit vacated the cited *Summit* decision in *Solis* v. *Summit Contractors, Inc.,* 558 F.3d 815 (8th Cir. 2009), and the Commission subsequently reiterated its support for OSHA's multi-employer citation policy and OSHA's authority to hold employers responsible for actions of employees who are not their own. *Solis* v. *Summit Contractors, Inc.,* 23 BNA OSHC 1196, 1202–03 (No. 05–0839, 2010). OSHA continues to believe, as stated in the NPRM:

> On multi-employer worksites, an employer's actions can affect the health and safety of another employer's employees. It is critical for the safety of all employees on a

worksite that contractors and subcontractors communicate with each other. Requiring communication between employers is an efficient way to ensure that each employer learns important information about the confined space hazards present so that all employees are adequately protected. (72 FR 67358.)

In this final rule, OSHA made every effort to minimize the impact of the information-exchange requirements on host employers and controlling contractors. OSHA believes that the affected parties conduct such multi-employer communication currently with minimal disruption to business operations, and that the obligations specified by the final standard will become routine and easy to fulfill for employers who must initiate a system for regular communication. OSHA provided a detailed explanation of its decision to retain these requirements, along with its authority for these requirements, in its discussion of final § 1926.1203(h) and (i).

SBA Recommendation 3: Advocacy notes that there are no single-family residential builders included in the economic analysis or the Initial Regulatory Flexibility Analysis (IRFA); however, it appears that there are confined spaces on these construction sites. If OSHA is assuming that no single-family residential builders will incur costs or be affected by the rule (possibly because OSHA is assuming that all of this work is subcontracted out and these subcontractors are already included), then OSHA should state this clearly in the rule. If not, these costs should be included in the economic analysis and IRFA [sic FRFA] (including the costs for the host-employer and controlling-contractor provisions and the paperwork and recordkeeping requirements associated with them). Advocacy notes that because the net benefits of this rule (*i.e.,* benefits minus costs) are only $8.2 million, the additional costs for single-family residential builders could mean that the costs of this proposed rule outweigh its benefits.

OSHA's Response: In this FEA, OSHA analyzed the costs and impacts to residential single-family builders for confined spaces in single-family dwellings that are subject to the final standard (see Chapters VI and VII of this FEA). OSHA determined that, even with these costs included, the benefits of the final standard significantly exceed the costs.

SBA Recommendation 4: In the Regulatory Flexibility Act section, it would be helpful if OSHA clarified in the first paragraph that ''an RFA analysis is required for any proposed rule that is expected to have a significant economic impact on a substantial number of small entities'' (rather than saying ''for certain proposed rules''). Further, OSHA should affirmatively declare in the IRFA [sic FRFA] that OSHA expects this proposed [sic final] rule will have a significant economic impact on a substantial number of small entities.

OSHA's Response: In the opening paragraph of this FRFA, OSHA made the following clarifying statement: ''The Regulatory Flexibility Act, as amended in 1996, requires that an agency prepare a final regulatory flexibility analysis for any rule expected to have a significant economic impact on a substantial number of small entities . . .'' However, the overall thrust of SBA's recommendation is inconsistent with the RFA, as well as with OSHA's official procedures.[63] According to both the RFA and OSHA's official procedures, the Agency *must* prepare an FRFA only if it is unable to certify that the final standard will not have a significant economic impact on a substantial number of small entities. In Chapter 7 of this FEA, the Agency explained that it was unable to certify that the final standard will not have a significant economic impact on a substantial number of small entities and that, therefore, it must prepare an FRFA.

Note that OSHA may prepare an FRFA even when it has no requirement to do so. In fact, OSHA may, and has, voluntarily prepared FRFAs for purposes of transparency even when the Agency is able to certify that the final standard will not have a significant economic impact on a substantial number of small entities.

SBA Recommendation 5: Also, in Item 7 of the IRFA (Alternatives), OSHA should have summarized the significant alternatives it considered and invited public comment on them (OSHA simply mentions that some were considered). Advocacy notes that a ''significant'' alternative is defined as one that: (1) Reduces the burden on small entities; (2) is feasible; and (3) meets the agency's underlying objectives. Since it appears that none of the alternatives OSHA considered meets these criteria, OSHA should have stated that fact and invited public comment on its determination. This is a significant issue because many of the SERs recommended that OSHA either adopt the general industry standard or harmonize the two sets of rules as much as possible.

OSHA's Response: OSHA did discuss, and request comment on, several regulatory alternatives, including the major alternative supported by the SBA of aligning the new rule more closely with the general industry rule (see discussion at 72 FR 67396, which incorporates discussions of regulatory alternatives in Table 6 on page 67397, and PEA Chapter 3 at OSHA–2007–0026–0002). The Agency considered these alternatives in terms of (1) reducing the burden on small entities; (2) feasibility; and (3) satisfying the Agency's statutory obligations and objectives. Furthermore, in referring the public, in Item 7 of the IRFA, to more extensive discussions of the alternatives elsewhere, OSHA attempted to comply with both the spirit and the letter of § 605(a) of the RFA to avoid duplicative analyses.

OSHA believes that it addressed the recommendation to a large extent by extensively reworking the proposed standard to this final format, which closely reflects the general industry standard, and thereby reduces the burden on small entities. In this FEA, OSHA evaluated the impacts of more stringent and less stringent regulatory alternatives. The final standard in large part reflects the general industry standard, tailored to address the unique characteristics of the construction industry. A more stringent regulatory alternative to the final standard would require that employers identify and distinguish the type of confined space according to the classification system specified in the proposed rule. OSHA estimates that the more complex classification system, present in the proposed rule but not in this final standard, would increase compliance costs by $1.7 million, not including any costs required for additional training.

One less stringent alternative would relieve employers of the requirement to have a written program for each permit-required entry, and would instead require making a copy of the standard available to employees. OSHA estimates that the requirement for a written program imposes compliance costs of about $1.3 million. OSHA believes that having a written program onsite maintains consistency with the general industry standard and provides specific guidance about how employees are to address hazards in the confined spaces; entry supervisors and employees may need to refer to the program quickly during the entry. The proposed rule allowed employers to simply keep a copy of the standard at the worksite instead of a written program because the proposed standard provided specific and detailed requirements for each potential type of confined space; however, commenters criticized this

[63] Available online at: *http://www.dol.gov/dol/regs/appendix.htm.*

approach as overly complex. The final standard is not conducive to replacing a written program with a copy of the standard because it takes a more generic approach to confined-space requirements than the proposal; this approach is similar to the general industry standard, which also requires employers to maintain a written program on site.

SBA Recommendation 6: Advocacy recommends that OSHA include a list of examples of confined spaces for each of the proposed categories to make the proposed standard easier to understand. For example, the only example cited for the Continuous System-Permit-Required Confined Space category is a ''sewer.'' It would be helpful if OSHA provided additional examples. Similarly, since the SERs and many small businesses have said they find the existing categories to be too complex and confusing, Advocacy recommends that OSHA consider providing a table with four columns listing: (1) The category of confined space; (2) examples of confined spaces under that category; (3) a sequential list of the steps an employer must take to comply with the requirements for that particular category; and (4) a cross-reference to the regulatory citation. OSHA should include this table as an Appendix to the rule as it has done for Entry Permits, which is very helpful.

OSHA's Response: As noted earlier in this chapter, for the final standard OSHA simplified the classification system for confined spaces, making the recommended supplemental lists, tables, and examples unnecessary. OSHA also plans to issue additional guidance documents to help employers comply with this simpler standard.

SBA Recommendation 7: Finally, OSHA should clarify the definition of a ''confined space'' itself, which is currently unclear. For example, it is unclear what is meant by ''not designed for continuous employee occupancy.'' It would be helpful if OSHA provided some examples for clarification. Also, OSHA should specifically state whether foundations, attics, and crawl spaces in single-family residential homes are considered confined spaces. Finally, OSHA should clarify whether there is any legal distinction between ''enclosed'' and ''confined'' spaces, as the term ''enclosed'' spaces is also used in the preamble.

OSHA's Response: In the Summary and Explanation section of the preamble to the final standard, OSHA clarifies its definition of a ''confined space,'' and § 1926.1201(a) of the standard includes a note with a non-exhaustive list of potential confined spaces that commonly occur on a construction worksite. This list provides examples for employers who may be unfamiliar with confined spaces in construction. The same section of the preamble addresses the scope of the standard with respect to affected spaces in single-family residential construction. In the final rule, OSHA does not distinguish between an ''enclosed space'' and a ''confined space'' because the final rule does not include requirements for enclosed spaces. OSHA amended the ''enclosed spaces'' provision of subpart V, § 1926.953, as part of this rulemaking, and defined that term for purposes of subpart V. OSHA does not use the term in the preamble of the NPRM or the final rule other than in response to SBREFA comments, the removal of § 1926.21(b), and the ACCSH recommendation to address enclosed spaces, which OSHA did not adopt.

4. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

On September 26, 2003, OSHA convened a Small Business Advocacy Review Panel (the Panel) for this rulemaking in accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as codified at 5 U.S.C. 601 *et seq.* The Panel consisted of representatives of OSHA, the Office of Information and Regulatory Affairs in the Office of Management and Budget, and the Office of Advocacy within the U.S. Small Business Administration. The Panel received oral and written comments on a draft proposal and a draft economic analysis from small entities (businesses) potentially affected by the rule. The Panel, in turn, prepared a written report which it delivered to the Assistant Secretary for Occupational Safety and Health (and is available in the docket on Regulations.gov as OSHA–2007–0026–0037). The report summarized the comments received from the small-entity representatives (SERs), and included recommendations from the Panel to OSHA regarding the proposal and the associated analysis of compliance costs. OSHA sought comment in the NPRM on a variety of issues of particular interest to small businesses as a result of the recommendations of the Panel. Table IV–21 below provides the Panel recommendations and a summary of OSHA's response to each of these recommendations in light of comments made on the record.

TABLE IV–21—OSHA RESPONSE TO RECOMMENDATIONS BY THE SMALL BUSINESS ADVOCACY REVIEW PANEL FOR THE PROPOSED STANDARD ON CONFINED SPACES IN CONSTRUCTION

Panel recommendation	OSHA's response
1. The SERs generally believed that OSHA had underestimated the costs of the draft proposed standard. The Panel recommended that OSHA revise its economic and regulatory flexibility analysis as appropriate to reflect the SERs' comments on underestimation of costs, and that the Agency compare OSHA's revised estimates to alternative estimates provided by the SERs. For those SER estimates that OSHA did not adopt, OSHA should explain its reasons for preferring an alternative estimate, and solicit comment on the issue.	The Agency relied, in part, on the comments and alternative cost estimates from the SERs to help ensure that the estimated costs of compliance with the final standard would reflect the actual costs that businesses might incur when complying with the requirements specified by the standard. OSHA reduced or eliminated some requirements altogether (such as those addressing hazardous-enclosed spaces) in light of the information provided and issues raised by the SERs. The Agency revised or clarified other requirements (such as those involving communications to/from controlling employers and the classification of spaces) to avoid the potential for misinterpretations regarding the applicability of the requirements and the specific actions necessary to ensure compliance. OSHA discusses the revisions in further detail below in the responses to specific Panel recommendations separately addressing each of these issues.

TABLE IV–21—OSHA RESPONSE TO RECOMMENDATIONS BY THE SMALL BUSINESS ADVOCACY REVIEW PANEL FOR THE PROPOSED STANDARD ON CONFINED SPACES IN CONSTRUCTION—Continued

Panel recommendation	OSHA's response
2. Many SERs observed that OSHA had underestimated the cost of training. They were concerned particularly about the length of time required for training, training the trainers, renewal training, and multilingual training. The SERs also noted that much retraining could be avoided if OSHA adopted the general industry rule because most firms already have trained their employees on that rule. Some SERs also noted that they still need to train employees on the general industry standard because some of their work would come under the general industry standard. In these situations, they would need to continue training on the general industry standard while adding training on the construction standard, and on how employees should determine which standard applies. Because OSHA's economic analysis examined training on a project basis, it is difficult to compare OSHA's cost estimates to the estimates provided by the SERs. The Panel recommends that OSHA carefully analyze the SERs' comments on training costs by developing methods for comparing these cost estimates to those estimates provided in OSHA's economic analysis. OSHA then should compare these costs to its present cost estimates, and revise its training costs as necessary based on all of the available information.	The Agency reviewed its estimates of the costs of complying with the training requirements in the proposed standard in light of the additional information provided by the SERs. OSHA understands that many businesses would have to comply with both the general industry and the construction industry versions of the OSHA confined-spaces standards, depending on the circumstances. Under the final standard, OSHA decided not to allow compliance with the general industry standard in lieu of compliance with this final standard for construction projects because there are situations where the general industry standard would not adequately protect construction employees because of the unique characteristics of construction work (see section II.B. (''History'') of this document for a discussion of this issue). However, to simplify the process for employers in confined spaces where both general industry and construction work is ongoing, OSHA provided a statement of enforcement policy which has the effect of allowing all employers in that space to comply with a single set of rules: The construction standard. That policy, along with the changes that bring the construction rule closer in line with the general industry rule and address much of the information provided by the SERs, should reduce the training costs.
3. Many SERs stated that OSHA had neglected some elements of monitoring costs, such as the need for a competent person to conduct the monitoring, the need for the entire crew to wait while a supervisor performs the monitoring, the short life span in the field of monitoring equipment, and costs associated with calibrating the equipment. Those SERs affected by the hazardous-enclosed spaces portion of the draft proposed rule were concerned particularly about increased monitoring costs. The Panel notes that if the SERs' views about the life of equipment and the need for the entire crew to suspend work during monitoring are correct, and no other assumptions are changed, the costs of monitoring would be three to five times higher than OSHA estimated, adding $6 to $12 million to the cost of the draft proposed standard. The Panel recommends that OSHA consider these factors and revise its monitoring cost estimates accordingly, and that monitoring costs reflect the total actual costs associated with conducting monitoring, including the cost of transporting and maintaining equipment, and the costs associated with crew members waiting for the completion of monitoring activities.	The Agency reviewed its estimates of the costs of complying with the atmospheric-monitoring requirements in the proposed standard in light of the additional information provided by the SERs. The Agency decided not to revise the use of a five-year useful life of monitoring equipment absent additional evidence demonstrating that a shorter span was more appropriate. In any case, the effect on total costs of minor variances in the life of equipment would be small. OSHA increased the costs associated with setting up monitoring equipment to 20 minutes (instead of 10 minutes) to reflect the possibility of additional losses of productive work time by other employees. OSHA also doubled the costs associated with periodic calibration of the equipment to reflect possible additional time, costs associated with the transportation of equipment, and other incidental expenses.
4. Many SERs were concerned that the hazardous enclosed spaces provisions of the draft proposed rule would result in extensive costs with few benefits. Some SERs thought the provisions required little recordkeeping beyond what they currently do. Also, some SERs noted that OSHA had underestimated the costs associated with recordkeeping. The Panel is concerned that the hazardous enclosed spaces provision would require major atmospheric testing and monitoring burdens not identified in the cost analysis. The Panel recommends that OSHA carefully examine the benefits and costs of this portion of the rule and compare these requirements carefully to what is required under other existing regulations, and to existing construction industry practice.	As recommended by the Panel, OSHA carefully examined the hazardous-enclosed space portion of the draft proposed standard. OSHA also reexamined applicable existing requirements, the extent of occupational risks involved, and the potential for risk reduction with the promulgation of additional regulatory requirements for hazardous-enclosed spaces. Based on this reexamination, the Agency decided not to promulgate any new or additional requirements for hazardous-enclosed spaces. OSHA believes that other existing standards adequately cover potential hazards associated with these spaces (for example, 29 CFR 1926.55). Therefore, OSHA eliminated all requirements involving hazardous-enclosed spaces, and no such requirements appear in the final standard.
5. Most SERs were concerned that the treatment of controlling employers in the draft proposed standard would result in additional costs for controlling employers in the form of increased monitoring and supervision of subcontractor activities. SERs also were concerned with the costs and time required to meet the coordination and communication requirements of the draft proposed standard. The Panel recommends that, if OSHA does not clarify these provisions, then it should examine further the possible costs of the controlling-employer provisions in the draft proposed rule. Also, OSHA should be certain that it has accounted for all of the burdens associated with this provision.	The Agency clarified the duties of the controlling employer in § 1926.1203 of the final standard (General requirements). In its explanation of paragraph (h) of this section, OSHA provided additional information about the type of information that the controlling employer must share with its subcontractors, and OSHA further clarified in a note to this paragraph that the controlling or host employer do not have to enter a confined space to collect the specified information for its subcontractors. Therefore, the Agency believes that compliance with final § 1926.1203 would not result in a significant added cost to controlling employers. Its purpose is to aid them in their duties to safely coordinate the activities of their subcontractors within the space.
6. Many SERs were concerned that the increased complexity of the classification system would add not only to the training costs but also to the costs associated with classifying confined spaces. The Panel recommends that, if the classification process is not simplified, OSHA should further analyze the costs associated with classifying confined spaces.	The Agency revised the classification system in the final standard to clarify and simplify the classification of confined spaces. The Agency believes this system reflects current practice under the general industry standard when employers apply it to construction work, thereby reducing the compliance burden for employers.

TABLE IV–21—OSHA RESPONSE TO RECOMMENDATIONS BY THE SMALL BUSINESS ADVOCACY REVIEW PANEL FOR THE PROPOSED STANDARD ON CONFINED SPACES IN CONSTRUCTION—Continued

Panel recommendation	OSHA's response
7. OSHA estimated that the draft proposed standard potentially affects small entities performing construction work in confined and enclosed spaces. Small entities in eight specific construction industry classifications were identified as being potentially affected by the draft proposed standard. These classifications include Residential Housing (SIC 1522); Industrial Buildings (SIC 1541); Other Nonresidential Buildings (SIC 1542); Highway and Street Construction (SIC 1611); Bridge and Tunnel Construction (SIC 1622); Water, Sewer, and Pipeline Construction (SIC 1623); Other Heavy Construction (SIC 1629); and Structural Steel Erection (SIC 1791). For each of these industry classifications, Table 3 in the Panel report shows estimates of the total number of small firms in the industry, the number of establishments operated by these firms, the number of employees of these firms, and the total sales of these firms. These figures represent the best available estimates for the numbers of potentially affected small entities meeting the definition of a small entity established by the Small Business Administration for these particular industry sectors. In summary, an estimated 86,012 small entities are potentially affected by the draft proposed standard. These firms operate an estimated 86,158 establishments, employ an estimated 921,831 employees, and generate total sales estimated at $192 billion. In addition to the small entities identified above.	As noted in the response to item 4 above, OSHA did not include the requirements addressing hazardous-enclosed spaces that the Panel believed may impose a burden on the industrial sector for General Contractors for Single Family Homes in the final standard.
8. Almost all of the SERs found the draft proposed standard difficult to follow. The SERs stated that they currently were using the general industry standard and were familiar with it. A few SERs saw some advantages to the differences between the draft proposed standard and the general industry standard, but even these SERs did not believe that these advantages were sufficient to justify the amount of training the draft proposed standard would require. The Panel recommends that OSHA either make the standard easier to follow, consider a standard closer to the general industry standard, or develop a standard in which the classification provisions that provide greater flexibility to employers are optional rather than required.	In the final standard, OSHA addressed the concerns of the SERs about the difficulty in following the text of the proposed standard. OSHA reorganized the regulatory text to follow more closely the general industry structure preferred by the SERs. The final standard specifies the general duties, the standards pertaining to permit-required confined spaces, the permitting process, entry permits, training, rescue services, and specific duties assigned to entrants, attendants, and supervisors. OSHA recognized and addressed problematic situations common to construction sites not clearly addressed by the general industry standard (e.g., sites where there is no host, the kind of information that entities need to exchange, conducting the initial hazard assessment of a previously unclassified space). OSHA adopted many of the general industry provisions, and adjusted them for use on a construction worksite.
9. Most SERs were confused by the distinctions between types of confined spaces. One SER referred to the distinctions as ''metaphysical.'' The Panel recommends that if these distinctions are retained, they should be made clearer, or OSHA should consider making such classifications optional.	In the final standard, OSHA greatly simplified the system for classifying confined spaces (relative to that in the proposed standard) by removing the series of classifications in the proposed rule and simply requiring that employers identify all confined spaces where their employees may work, and designate them as either permit-required confined spaces (*i.e.,* permit spaces) or non-permit spaces. Within the subcategory of permit spaces, employers must identify and address the hazards, such as through hazard isolation or atmosphere control; the final rule addresses these responsibilities using performance language in §§ 1926.1203 (General requirements) and 1926.1204 (Permit-Required Confined Space Program) and does not require the additional classifications required by the proposed rule.
10. Many SERs noted that the hazardous-enclosed spaces requirements would result in a major recordkeeping burden. Some SERs believed that these requirements represented major new requirements for many contractors. OSHA notes that a few of the SERs seemed unacquainted with some of the requirements of existing regulations. The Panel notes that the requirement to evaluate each potentially hazardous space, implicit in § 1926.1225(a)(3), could radically alter the compliance requirements and the costs of the rule in ways not reflected in OSHA's Preliminary Initial Regulatory Flexibility Analysis. The Panel recommends that OSHA more carefully explain the relation of these requirements to existing requirements and practice, and explain the need for different requirements.	See the Agency's response to item 4 above.

TABLE IV–21—OSHA RESPONSE TO RECOMMENDATIONS BY THE SMALL BUSINESS ADVOCACY REVIEW PANEL FOR THE PROPOSED STANDARD ON CONFINED SPACES IN CONSTRUCTION—Continued

Panel recommendation	OSHA's response
11. SERs were concerned that the provisions addressing controlling employers would require general contractors to develop confined-space expertise and provide confined-space supervision. OSHA's intent with these provisions was not to change existing relations between general contractors and their subcontractors, but rather to assure that general contractors provide subcontractors with the information they possess relevant to confined spaces. Some SERs agreed that additional information could be useful. The Panel recommends that OSHA clarify this requirement to indicate that the role of the controlling employer is only to provide any information they possess concerning confined spaces.	As stated above, OSHA clarified the responsibilities of controlling employers in final § 1926.1203. In addition to sharing specific information that it may have about the space with its affected subcontractors, the note to that section clearly states that employers do not have to enter a confined space to gather such information for its subcontractors. The purpose of this section is not to change existing relations between general contractors and their subcontractors, but rather to assure that general contractors provide subcontractors with information relevant to the safety of their subcontractors' employees working within a confined space. The proposed standard did not require controlling employers to develop confined-space expertise to fulfill their duties, and neither does the final standard.
12. OSHA's Hazard Communication standard also provides guidance to employers on the use of certain chemicals in the workplace. However, OSHA does not see any conflict between this standard and the draft proposed standard. The Hazard Communication standard provides general precautionary information regarding the use of certain chemicals and products; the draft proposed standard provides more explicit requirements for conditions specific to confined and enclosed spaces. Also, many construction contractors still will need to follow the general industry standard [for confined spaces] in some types of work, and thus need to train their workers in using two different standards, and when to apply each standard. The SERs identified other federal standards that they believe address the hazards associated with confined and enclosed spaces, including OSHA standards for Ventilation (§ 1926.57) and for Gases, Vapors, Fumes, Dusts, and Mists (§ 1926.55), and EPA and HUD rules on abatement work. Accordingly, the Panel recommends that OSHA clarify the exact relation between the draft proposed standard and other standards affecting work by construction employers in confined or enclosed spaces, including the Hazard Communication standard, the general industry standard, the Permissible Exposure Limit standards, the Ventilation standard, the Gases, Vapors, Fumes, Dusts, and Mists standard, and applicable EPA and HUD standards.	OSHA recognized that the confined spaces standard may overlap with provisions in other part 1926 standards. In the preamble discussion of this final rule, OSHA clarified the relationship between this standard and other pre-existing construction standards which may be applicable in a confined space. In § 1926.1201(c) of the final standard, OSHA explains how overlapping standards would interact with each other, and the obligations of an employer in such situations. OSHA also explains in the preamble of the final rule how employers would evaluate practical situations under the requirements of the final standard when it overlaps with another OSHA requirement. In its explanation of the scope of the final rule, OSHA also provided additional guidance about the potential overlap with part 1926, subparts J, P, S, and Y. In addition, OSHA made a minor modification to 29 CFR part 1926, subpart V, to ensure that it provides clear guidance to employers about the interaction of that standard with the confined spaces in construction standard. OSHA is currently unaware of any other Federal agency standards that overlap or conflict with the final OSHA standard.
13. Alternatives to adopting the draft proposed standard developed by OSHA include adopting the draft proposed standard developed by the Advisory Committee for Construction Safety and Health, the industry consensus standard developed by the American National Standards Institute, or the existing OSHA general industry standard [for confined spaces]. Additional alternatives include modifying the OSHA draft proposed standard by removing provisions addressing hazardous-enclosed spaces, removing the requirement to classify spaces in the least hazardous category, revising requirements for atmospheric monitoring to allow periodic monitoring instead of continuous monitoring, and/or reducing or eliminating recordkeeping requirements. The Panel recommends that OSHA continue to consider these alternatives, and discuss and solicit comment on them in the proposed rule.	OSHA considered alternatives to drafting its own confined space standard for construction. The Agency considered the general industry standard for confined spaces, but found it to be unsuitable for the construction industry. OSHA believes that the general industry standard does not adequately address some problematic situations common on construction sites. These concerns include multiple subcontractors working within one space, and hazards created by a confined space built around employees. OSHA drafted the final standard to be similar to the general industry standard in terms of organization and most of the requirements. ANSI is presently considering whether it is feasible to begin drafting a confined-spaces standard for application specifically to construction. OSHA addressed major concerns of the SERs regarding the hazardous-enclosed space requirements in the draft proposed standard by removing that section completely from the proposal and final standard. As previously stated above, OSHA also simplified classification as either permit-required or non-permit required. Finally, OSHA reduced employers' recordkeeping requirements by minimizing the time necessary for employers to maintain documentation. For example, in § 1926.1205 of the final standard, an employer will only have to maintain entry permits for one year.

TABLE IV–21—OSHA RESPONSE TO RECOMMENDATIONS BY THE SMALL BUSINESS ADVOCACY REVIEW PANEL FOR THE PROPOSED STANDARD ON CONFINED SPACES IN CONSTRUCTION—Continued

Panel recommendation	OSHA's response
14. Most SERs indicated a preference for using the general industry standard for construction work, as opposed to the draft proposed standard. OSHA is concerned that not all construction employers are as familiar with the general industry standard as the SERs are, and that some employers might benefit from a standard designed to provide greater compliance flexibility. The Panel recommends that OSHA consider the alternative of adopting the general industry standard and, if this alternative is not adopted, discuss and solicit comment on this alternative in the proposed rule. If OSHA does not adopt a standard closer to the general industry standard, the Panel recommends that OSHA revise its comparative cost analysis of the general industry rule and the draft proposed standard to take account of SERs' concerns about the increased training, communication, and classification costs associated with the draft proposed standard. The Panel also recommends that OSHA solicit comment on how an alternative standard similar to the general industry standard could be adapted to the construction sector. In addition, the Panel recommends that OSHA analyze and solicit comment on the non-regulatory alternative of not issuing a final standard, relying instead on existing standards and improved outreach.	As stated before, the draft proposed confined-spaces standard for construction addresses some concerns that are unique to the construction industry. OSHA believes that the reorganization of the proposed standard and the elimination of the section on hazardous-enclosed spaces will make the final standard easier to read than the general industry standard for confined spaces, thereby expediting employer compliance. OSHA requested that the public submit comments regarding the degree of flexibility granted to employers in classifying confined spaces, as well as other alternatives to the proposed rule in general. In the final standard, OSHA adopted a classification system based on identifying permit-required spaces (*i.e.,* permit spaces). This system reflects the classification system used widely under the general industry standard. OSHA rejected the alternative of not issuing a final standard because the record demonstrates that the existing standards, even with improved outreach, would be inadequate to prevent the fatalities and injuries identified earlier in this analysis. The earlier discussion in this FEA under ''Need For Regulation'' includes additional information on the need for this new standard.
15. The SERs were confused by the variety of distinctions among confined spaces, and generally believed that the training required by these provisions negated any advantages that might arise from the flexibility of different types of confined spaces. The Panel recommends that OSHA examine and solicit comment on alternatives that reduce the number of types of confined spaces, and that OSHA consider alternatives that would allow employers the choice of using or ignoring these provisions.	In the proposed rule, the Agency reduced the number of classifications by removing the classification for hazardous-enclosed spaces. In the proposed rule, OSHA further clarified the four remaining categories by reorganizing the text of the proposed standard to ensure that all requirements for each classification type were available in one section. OSHA requested that the public submit comments regarding other alternatives to the proposed rule. In the final standard, OSHA further reduced the number of confined-space classifications by adopting the approach used in the general industry standard to designate permit-required spaces. The Agency believes that, because the final standard closely mirrors the general industry standard, there will be minimal additional costs for employers to train their employees on the final construction standard.
16. Many SERs viewed the requirements for hazardous-enclosed spaces as highly burdensome. The Panel recommends that OSHA remove this provision unless OSHA can (1) clarify exactly how the requirements of this provision are different from other existing requirements and practices; (2) develop a detailed cost analysis of this provision; (3) quantify the hazards associated with hazardous-enclosed spaces; and (4) explain how the hazardous-enclosed space provisions can serve to reduce these hazards. If OSHA retains this requirement or one like it, OSHA also should solicit comment on the need for the recordkeeping requirements in the provision. In addition, OSHA should solicit comment on removing this provision entirely.	As recommended by the Panel, OSHA removed the provisions for hazardous-enclosed spaces.
17. Most SERs were concerned that the provisions for controlling contractors would alter the existing relationship between contractors and subcontractors with little gain in reduced risk to employees. OSHA notes that the purpose of this provision was only to ensure that contractors share available information at multi-employer worksites. Some SERs agreed that information sharing would be helpful, but were concerned that the OSHA draft went far beyond this purpose. The Panel recommends that OSHA consider removing this provision or clarifying the purpose of this provision, and solicit comment in the proposal on the need for this provision.	As stated previously, § 1926.1203(h), and the note to that section, clarify the duties of the controlling contractor and explain that a controlling contractor will not have to enter a confined space to gather the specified information for the subcontractor.

OSHA received no significant comments in response to the Initial Regulatory Flexibility Analysis for the proposed rule, but it did receive two comments on whether elements of the proposed standard were feasible for small entities. First, the National Association of Home Builders (NAHB) claimed the proposed rule required controlling contractors to supervise all entries into permit spaces, and argued that it was not economically feasible for small home builders to do so (ID–219.2). In addition, NAHB claimed the information coordination duties of the proposed rule were not economically feasible for small home builders.

OSHA finds these arguments misguided. First, neither the proposal nor the final rule required controlling employers to supervise the entries of other employers. Nor did NAHB provide convincing evidence that the coordination duties placed on contractors were infeasible.

Among the evidence cited in the published study NAHB used to support this economic infeasibility conclusion is a profit rate (profit as a percentage of revenue) of 7.7 percent for NAHB builder members in 2006, which is significantly higher than the more conservative rate OSHA used in its calculations: 4.53 percent. If the actual profit rate is higher than OSHA's

estimate, OSHA's impact estimates may *overstate* the effect of this rule on revenues and profits in the homebuilding industry. As previously demonstrated in Chapter 7 of this FEA, these potentially inflated estimates of revenue and profit impacts for the new single-family housing-construction industry (NAICS 236115; all affected firms) are well below the threshold of economic infeasibility at 0.04 percent and 0.99 percent, respectively (0.05 percent and 1.08 percent, respectively, for small entities).

As noted in Chapter 6 of this FEA, OSHA assigned typical unit-time estimates for the multi-employer (information-exchange) provisions of the final standard and demonstrated there, and in this chapter, that the costs incurred by home builders would not be excessive or unreasonable. Despite assertions by NAHB that the demands of coordinating subcontractors would be economically infeasible as prescribed by the multi-employer provisions of the rule, there is evidence (ID–211, Tr. pp. 123–127) to suggest that home builders often find that they must coordinate and communicate efficiently with subcontractors across construction sites of varied size and complexity. Therefore, OSHA believes that, based on the evidence in the record as a whole, the multi-employer information-exchange requirements of the final standard would not impose an unreasonable burden on home builders, and would not threaten the competitive stability of the industry or otherwise create conditions of economic infeasibility.

Another commenter asserted that the impact of the proposed rule on small businesses would be ''staggering'' and would drive some contractors out of business, arguing that several of the costs of the proposed standard were disproportionate to its benefits (ID–112). This commenter suggested that OSHA withdraw the proposed standard or that compliance with the general industry standard constitute compliance with the construction standard. OSHA revised the final rule by harmonizing it with the general industry standard to a substantial degree. Therefore, the final standard in large part reflects the general industry standard, tailored to address the unique characteristics of the construction industry. In revising several provisions of the final rule to reflect the general industry standard, OSHA sought to minimize the impact on small entities by minimizing the costs involved in distinguishing between the two rules and complying with both standards, as well as the costs involved in retraining employees on new procedures.

5. A Description, and an Estimate, of the Number of Small Entities to Which the Rule Will Apply, or an Explanation of Why no such Estimate is Available

OSHA completed an analysis of the economic impacts associated with this final rule, including an analysis of the type and number of small entities to which it would apply, as described previously in this section (See Tables IV–19 and IV–20). To determine the number of small entities potentially affected by this rulemaking, OSHA used the definitions of small entities developed by the Small Business Administration (SBA) for each industry.

For the construction industry generally, SBA defines small businesses using revenue-based criteria. For most of the affected construction industries, including those industries that mostly consist of general contractors, OSHA classified firms with annual revenues of less than $33.5 million as small businesses. For specialty contractors, such as structural-steel erection contractors, the Agency considered firms with annual revenues of less than $14 million to be small businesses. Based on the definitions of small entities developed by SBA for each industry, the final rule would potentially affect a total of 490,000 small entities, as shown in Table IV–4. Included in this number are an estimated 451,000 entities with fewer than 20 employees, as shown in Table IV–5.

6. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement, and the Type of Professional Skills Necessary for Preparation of the Report or Record

OSHA is issuing a standard that addresses the work practices employers must use and other requirements they must follow when performing construction work in confined spaces. Table IV–14 of this FEA shows the unit costs for these requirements.

Employers must keep records associated with work in confined spaces as specified by the final standard. Records include entry permits and verification documents. The final standard does not require regular reporting; however, employers must demonstrate compliance with the recordkeeping requirements as part of OSHA compliance inspections.

Other compliance requirements of the final standard include evaluating and classifying confined spaces, eliminating or isolating hazards, providing sufficient ventilation, conducting atmospheric monitoring, providing an attendant, providing respiratory protection, preventing unauthorized entry, planning and providing rescue capability, and providing training.

The preamble to the final standard provides a comprehensive description of, and further detail regarding, the provisions of the final rule. The preceding chapters of this FEA provide a description of the types of entities subject to the new and revised requirements, and the types of professional skills necessary for compliance with the requirements.

7. A Description of the Steps the Agency Took To Minimize any Significant Economic Impact on Small Entities Consistent With the Stated Objectives of the Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule, and Why the Agency Rejected Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities

OSHA took a number of steps to minimize economic burdens on small entities. In response to the SERs' suggestion that the Agency harmonize the construction standard with the general industry standard to the greatest extent possible, the final standard in large part reflects the general industry standard, tailored to address the unique characteristics of the construction industry. In revising several provisions of the final rule to reflect the general industry standard, OSHA sought to minimize the impact on small entities by reducing the need to comply with different confined-space requirements for construction and general industry, and to train employees on new procedures. The vast majority of commenters believed that the classification system in the proposed rule would not contribute to worker safety, and would result in confusion among employers. Therefore, OSHA decided to adopt the system reflected in the general industry standard for classifying confined spaces as permit-required confined spaces.

In addition, OSHA did not include a proposed provision in the final rule that required an employer to summon an entry-rescue service whenever the employer initiated a non-entry rescue. OSHA also allows employers to use the alternative ventilation-only procedures under final § 1926.1203(e) if an employer is able to isolate all physical

hazards in the space, which provides more flexibility to an employer than the general industry standard. Furthermore, OSHA allows employers to suspend a permit in certain circumstances, rather than cancelling and developing a new permit. Each of these options has the potential to significantly reduce the economic impact on employers, including small entities. The preamble for §§ 1926.1203(e) and 1926.1205(e) includes an in-depth explanation of the specific steps taken to minimize employer burden.

Another less stringent alternative would relieve employers of the requirements specified in the final standard for information exchange between host employers, controlling contractors, and entry employers on worksites; these requirements are absent from the general industry standard. While OSHA notes that host employers must share this information under the general industry standard, and believes that this exchange of information occurs as a matter of usual and customary practice on general industry and construction worksites alike, the general industry standard does not explicitly impose information-sharing requirements on controlling contractors. OSHA estimates that compliance with the information-exchange requirements of the final rule will result in compliance costs of about $9.3 million, and that the less-stringent alternative, reflected in the general industry standard, would reduce compliance costs by about $5.9 million. However, OSHA believes that, given the unique characteristics of the construction industry that include continually changing projects and multiple employers onsite, the specific information-exchange requirements contained in the final rule will contribute to an effective exchange of information about confined-space hazards and will, therefore, increase worker safety on construction sites. Another, less stringent, alternative would relieve employers of the requirement in the final standard to develop a written program for each permit-required entry, and would instead require that a copy of the standard be made available at the worksite. OSHA estimates that the requirement for a written program will result in compliance costs of about $1.3 million. OSHA believes that having a written program onsite maintains consistency with the general industry standard and provides site-specific information about the confined spaces. The proposed rule allowed employers to simply keep a copy of the standard at the worksite instead of a written program because the proposed standard provided specific and detailed requirements for each potential type of confined space. The final standard is not conducive to replacing a written program with a copy of the standard because it takes a more generic approach to confined-space requirements than the proposal; this approach is similar to the general industry standard, which also requires employers to maintain a written program on site.

9. Sensitivity Analysis

In this chapter, OSHA presents the results of two different types of sensitivity analysis to demonstrate how robust the estimates of net benefits are to changes in selected cost and benefit parameters. In the first set of sensitivity tests, OSHA makes a series of isolated changes to individual cost- and benefit-input parameters to determine their effects on the Agency's estimates of annualized costs, benefits, and net benefits. In the second set of tests—a so-called ''break-even analysis''—OSHA also investigates isolated changes to individual cost- and benefit-input parameters, but with the objective of determining the magnitude of the changes needed for annualized costs to equal annualized benefits. The Agency conducted these calculations for informational purposes only, and is not relying on these calculations to justify this final rule.

Effects of Isolated Changes to Specific Input Parameters

OSHA provides below a sensitivity analysis of several assumptions underlying the Agency's estimates of the annualized costs and benefits of the final rule. The calculations underlying the estimation of compliance costs, benefits, and economic impacts associated with this rulemaking are generally linear and additive. Accordingly, the changes in the costs or benefits will generally be proportional to variations in the relevant input parameters. For example, if the estimated time for supervisors to evaluate and classify confined spaces increased by 50 percent, the corresponding labor costs would also increase 50 percent.

OSHA evaluated a series of such changes in input parameters to test the extent to which the general conclusions of the economic analysis remained stable. On the whole, OSHA finds these conclusions to be robust, as even sizeable changes in the values of several input parameters did not greatly alter the estimates of the costs, benefits, or net benefits. Furthermore, this final rule produces significant positive net benefits regardless of the individual revisions to costs, benefits, or discount rate. Table IV–22 below summarizes the results of the individual sensitivity tests. In all the sensitivity tests, the parameters remained unchanged except for the one tested.

In the first sensitivity test on costs, when OSHA increased by 100 percent the estimated time for supervisors to evaluate and classify confined spaces, the estimated total costs of compliance increased by $0.7 million annually, or by 1 percent. In a second sensitivity test, OSHA increased by 100 percent the time estimated for information exchange on a multi-employer project. This test led to an increase in the estimated annualized compliance costs of $9.3 million, or of about 17 percent. In a third sensitivity test, OSHA increased by 100 percent its estimate of the time needed to issue entry permits and verify the safety of entries into confined spaces, which resulted in an increase in the estimated annualized compliance costs of $2.3 million, or of about 4 percent. Finally, in a fourth sensitivity test, when OSHA increased by 100 percent the estimate of the time devoted to training entrants and attendants, the estimated compliance costs rose by $1.5 million, or by about 3 percent.

In addition, OSHA examined the effect of a change in the discount rate on annualized costs and benefits. Changing the discount rate from 7 percent, used in the base case, to 3 percent lowered the estimated costs of the final rule from $60.3 million to $59.2 million per year (while leaving estimated annual benefits unaffected), thereby increasing the estimate of net benefits by $1 million.

OSHA also performed a sensitivity test on an input parameter used to estimate the benefits of the final rule. In particular, OSHA assumed that there were 100 injuries for every fatality instead of 150 injuries per fatality, the value used in the main analysis. As a result, the estimated benefits of the final rule fell by $15.6 million, or by about 17 percent.

In conclusion, these sensitivity tests demonstrate that even with relatively large variations in the input parameters, there are no large changes in the estimates of compliance costs or benefits.

TABLE IV–22—SENSITIVITY TESTS

Variable	OSHA's Best estimate	Change in variable	Change in annualized costs	Percentage change in annualized costs	Annualized costs	Net benefit
Cost Parameters						
OSHA's Best Estimate of Total Annualized Costs					$60.3 million	$33.3 million.
Supervisor Time to Evaluate and Classify Confined Spaces.	Average of 12 minutes per confined space.	Increase by 100 percent.	$0.7 million	1	$61 million	$32.6 million.
Time for Information Exchange on a Multi-employer Project.	Per project: 8 minutes of supervisor time for exchange information between host employer and controlling contractor, 20 minutes of supervisor time each for the controlling contractor, employee representative, and every entry employer, 5 minutes of supervisor time each for the controlling contractor and 10 percent of other (non-entry) employers on the work site, and 10 minutes of supervisor time each for the controlling contractor and two other employers on the work site for coordinated entries.	Increase by 100 percent.	$9.3 million	17	$69.6 million	$24 million.
Time to Issue Entry Permits and Verify Safety of Entries.	Per permit issued: 10 minutes of supervisor time and 5 minutes of clerical time. Per entry not requiring a permit: 5 minutes of supervisor time and 5 minutes of clerical time.	Increase by 100 percent.	$2.3 million	4	$62.6 million	$31 million.
Employee Training ...	Per project: 15 minutes of worker time and 1.5 minutes each of supervisor and clerical employee time for each entrant, 15 minutes of attendant time and 1.5 minutes each of supervisor and clerical employee time for each attendant.	Increase by 100 percent.	$1.5 million	3	$61.8 million	$31.8 million.
Discount Rate	7 percent	Change to 3 percent.	−$1 million	−2	$59.2 million	$34.3 million.
Benefit Parameter						
OSHA's Best Estimate of Total Annualized Benefits					$93.6 million	$33.3 million.
Number of injuries per fatality.	150	100	−$15.6 million ..	−17	$78 million	$17.7 million.

Break-Even Analysis

OSHA also performed sensitivity tests on two other parameters used to estimate the net costs and benefits of the proposed rule. However, for these tests, the Agency performed a break-even analysis that asked the extent to which the various cost and benefits inputs would have to vary for the costs to equal benefits.

In the first break-even test addressing cost estimates, OSHA examined how much costs would have to increase for costs to equal benefits. This point would occur when costs increased by $33.3 million, or 55 percent.

In a second break-even test, on benefits, OSHA examined the reduction needed in the rule's estimated aggregate benefits (in terms of avoided fatalities and injuries) for the costs to equal the benefits. The point would occur when OSHA's estimates of the number of avoided fatalities and injuries fell by 59 percent. The break-even point would, thus, require reducing the estimated benefits of the final rule by 2.18 fatalities and 326 injuries prevented annually (relative to OSHA's estimate of 5.2 fatalities and 780 injuries prevented annually).

In summary, according to these two break-even tests, there would have to be a fairly significant increase in costs or reduction in benefits for the rule to no longer produce positive net benefits. Further, OSHA notes that some of the other benefits of the rule are non-quantifiable, such as those benefits associated with making the general industry and construction provisions as compatible as possible. These benefits would increase the overall net benefits of the final rule.

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C. Office of Management and Budget Review Under the Paperwork Reduction Act of 1995

The final Confined Spaces in Construction Standard contains collection of information requirements (paperwork) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3501 *et seq.*) In accordance with 44 U.S.C. 3506(c)(2) of the PRA–95, OSHA solicited public comments on the *Confined Spaces in Construction (29 CFR 1926, subpart AA)* Information Collection Request (ICR) (paperwork burden hour and cost analysis) for the proposed rule. The Department also submitted this ICR to OMB for review in accordance with 44 U.S.C. 3507(d) on November 28, 2007. On February 15, 2008, OMB authorized the Department of Labor to use OMB Control Number 1218–0258 in future paperwork submissions involving this rulemaking. OMB commented, ''This OMB action is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995.'' OMB also stated that ''OMB will review

the associated collection requirements in parallel with the final regulation prior to approval.''

OSHA received no public comments on the proposed ICR. However, a number of comments received in response to the Notice of Proposed Rulemaking (NPRM), described earlier in this preamble, contained information relevant to the burden-hour and cost analysis that OSHA considered when it developed the revised ICR associated with this final rule.

In accordance with 44 U.S.C. 3507 of the PRA–95, OSHA requested OMB approval of the collection of information requirement described below. A copy of the ICR is available at *http://www.reginfo.gov*. OMB is preapproving the collection of information requirements under OMB Control Number 1218–0258 and they will take effect on the same date as other parts of this rule.

The Department of Labor notes that, under the PRA–95, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it and the collection of information displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

The collection of information requirements in this final rule impose duties on employers to communicate, produce and maintain records, and take other measures to protect employees from confined-space hazards in construction. These provisions are necessary to protect the health and safety of employees who are engaged in construction work in confined spaces. Accordingly, each employer engaged in construction who has employees who enter a permit-required confined space (PRCS) must have, as applicable, the following information posted in accordance with the standard or on file and available at the job site: Danger signs and other means of notification of PRCSs; a written PRCS program; entry permits that document procedures necessary for safe permit-entry operations and that include atmospheric-testing and monitoring information and results; signed certifications and supporting documentation for entry under alternate procedures, including documentation of the hazard determinations and the methods used to protect employees from these hazards; written approval from a professional engineer for use of job-made hoisting systems when entering spaces under alternate procedures, certifications documenting reclassification of the space; a Safety Data Sheet or similar written information to provide to medical facilities treating exposed employees; and training records for employees. Entry employers must retain each canceled entry permit for at least 1 year to facilitate the review of the permit-required confined space program and maintain employee training records for the period of time the employee is employed by that employer. Employers must make all information required to be developed under the standard available for review by the affected employees and their authorized representatives, and provide access to documents required to be retained by the standard to OSHA for compliance purposes. Additionally, controlling contractors have responsibilities to obtain and disseminate information about the permit space, host employers have a duty to disclose known information about permit spaces, and each employer engaged in construction who has an employee enter a PRCS must share information with the controlling contractor and must ensure that its attendants, authorized entrants, supervisors and rescue teams or services communicate as required by the standard. An employer's failure to generate and disclose the information required in this standard will affect significantly the Agency's effort to control and reduce injuries and fatalities related to confined spaces in construction.

Table IV–23 below identifies and describes the collection of information requirements contained in the final rule. As discussed in Section II.B. of the preamble, OSHA is finalizing a Confined Spaces in Construction standard that more closely resembles the general industry standard than did the NPRM. OSHA's rationale for the need to collect information is set forth in the general discussion in the Background section of the preamble, and in the discussion of each of these specific provisions in Section III of the preamble. As noted in the preamble discussions of the specific sections of the standard, the new information collection requirements not contained in the NPRM include requirements for written PRCS programs, written approval for job-made hoisting systems used when entering spaces under alternate procedures, and consultation with affected employees and their authorized representatives in the development and implementation of the PRCS program. In addition, while the proposed rule required host employers to communicate directly with entry employers, OSHA assigned the controlling contractor that function in the final rule. Table IV–23 identifies the collection of information requirements contained in the final rule as follows:

TABLE IV–23—COLLECTION OF INFORMATION REQUIREMENTS OF THE FINAL STANDARD

29 CFR 1926.1203(b)(1) and (b)(2)	If the workplace contains a PRCS, employers must inform employees by posting a danger sign, and inform the employees' authorized representatives and controlling contractor in a manner other than posting, of the existence and location of, and the danger posed by, the PRCS.
29 CFR 1926.1203(d), 29 CFR 1926.1204, 29 CFR 1926.1211(a)(5), and 29 CFR 1926.1212(a).	If an employer decides that employees it directs will enter a PRCS, the employer must have and implement a written permit-space program at the construction site that complies with § 1926.1204 of this standard. The employer must make the written program available prior to, and during, entry operations for inspection by employees and their authorized representatives. Entry employers must document a number of necessary procedures, including: Safe PRCS entry operations; summoning rescue and emergency services (including the development of a rescue plan for employers who have in-house rescue teams), rescuing entrants from PRCSs, providing necessary emergency services to rescued employees, and preventing unauthorized personnel from attempting a rescue; coordinating entry operations; and for concluding entry. Employers must consult with affected employees and their authorized representatives on all aspects of the PRCS program.
29 CFR 1926.1203(e)(1)(v), (e)(2)(viii) and (e)(2)(ix).	Before entry under alternate procedures, employers must document the determinations and supporting data required by paragraphs § 1910.1204(e)(1)(i)–(e)(1)(iii) of this standard. The employer must make the documented determinations and supporting data available to each employee entering the space or to that employee's authorized representative. A job-made hoisting system is permissible if it is approved for personnel hoisting by a registered professional engineer, in writing, prior to use.

TABLE IV–23—COLLECTION OF INFORMATION REQUIREMENTS OF THE FINAL STANDARD—Continued

29 CFR 1926.1203(g)(3)	Entry employer(s) must document and certify the basis for determining the elimination or isolation of all hazards in a PRCS when reclassifying the space. The certification must be made available to each employee entering the space or to that employee's authorized representative.
29 CFR 1926.1203(h)(1)(i)–(h)(1)(iii), (h)(2)(i), (h)(5)(iii), and (i).	The host employer and controlling contractor must exchange PRCS information before and after entry operations.
29 CFR 1926.1203(h)(2)(ii), and (i)	The controlling contractor must provide PRCS information to non-entry employers before entry operations begin.
29 CFR 1926.1203(h)(2)(ii), (h)(3)(i)–(h)(3)(ii), (h)(5)(i)–(h)(5)(ii), and (i).	The controlling contractor and the entry employer(s) must exchange PRCS information before and after entry operations.
29 CFR 1926.1203(h)(4)(i), (h)(4)(ii), and (i).	The controlling contractor and entry employer(s) must each coordinate entry operations: When more than one entity performs PRCS entry at the same time; or when performing permit-space entry while at the same time any activities are performed that could foreseeably result in a hazard in the PRCS.
29 CFR 1926.1204(e)(6)	Employers must provide results of any testing conducted under § 1926.1204 to employees or employees' authorized representative.
29 CFR 1926.1204(m) and (n)	Entry employers must review entry operations when the measures taken under the permit-space program may not protect employees, and revise the program to correct deficiencies found to exist before subsequent entries are authorized. Entry employers must review the permit-space program, using the canceled permits retained under § 1926.1205(f) of this standard, within 1 year after each entry, and revise the program as necessary to protect employees participating in entry operations from permit-space hazards. Employers may perform a single annual review covering all entries performed during a 12-month period.
29 CFR 1926.1205(a) and (c), and 29 CFR 1926.1206.	Each entry employer must document the completion of measures required by § 1926.1204(c) of this standard by preparing an entry permit and making it available by posting or other equally effective means to authorized entrants or their authorized representatives before entry is authorized. Employers must identify on the permit specific information such as: The purpose of the entry, date and authorized duration of the permit, authorized entrants, means of detecting atmospheric hazards, attendants, entry supervisors, hazards of the PRCS, measures used to isolate the PRCS and to control permit-space hazards before entry, acceptable entry conditions, results of tests and monitoring performed under § 1926.1204(e) of this standard and the names or initials of the testers and an indication of when the tests were performed, rescue and emergency services (such as the equipment to use and the numbers to call) and the means to summon those services, communication procedures, equipment, any additional permits issued previously to authorize work in the permit space, and any other information necessary, given the circumstances of the particular confined space to ensure employee safety.
29 CFR 1926.1205(b) and 29 CFR 1926.1210(b).	Before entry begins, the entry supervisor identified on the permit must sign the entry permit, and verify, by checking that the appropriate entries have been made on the permit, that all tests specified by the permit have been conducted and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin.
29 CFR 1926.1205(f)	Entry employers must retain each canceled entry permit for at least 1 year to facilitate the review of the permit-required confined space program required by § 1926.1204(n) of this standard. The employer must note on the permit any problems encountered during an entry operation and make appropriate revisions to the permit-space program.
29 CFR 1926.1207(d)	Employers must maintain training records containing each employee's name, the name of the trainers, and the dates of training to show completion of the training required by § 1926.1207(a) through (c) of this standard. The documentation must be available for inspection by employees and their authorized representatives for the period of time the employee is employed by that employer.
29 CFR 1926.1208(c) and (d)	Entry employers must ensure that authorized entrants: Communicate with the attendant as necessary to enable the attendant to assess entrant status and to enable the attendant to alert entrants of the need to evacuate the space as required by § 1926.1209(f) of this standard, and to alert the attendant whenever there is any warning sign or symptom of exposure to a dangerous situation, or the entrant detects a prohibited condition.
29 CFR 1926.1209(e), (f), (g), and (h)(1)–(h)(3).	Entry employers must ensure that attendants: Communicate with authorized entrants and order them to evacuate the permit space under specified conditions; summon PRCS rescue services as soon as necessary; warn unauthorized persons to stay away from, or to exit, PRCSs; and informs authorized entrants and entry supervisors of any unauthorized PRCS entry.
29 CFR 1926.1210(d) and 29 CFR 1926.1211(c).	Entry employers must ensure that each entry supervisor verifies that rescue services are available, the means for summoning them are operable, and the employer will be notified as soon as the services become unavailable. If the employer uses non-entry rescue, the employer must confirm, prior to entry, that emergency assistance will be available in the event that non-entry rescue fails.
29 CFR 1926.1211(a)(1) and (a)(2)	Employers who designate rescue and emergency services must evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified, and evaluate a prospective rescue service's ability to function proficiently with rescue-related tasks and equipment while rescuing entrants from the particular PRCS identified.
29 CFR 1926.1211(a)(4)	Employers who designate rescue and emergency services must inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site.
29 CFR 1926.1211(d)	If an injured entrant is exposed to a substance for which the employer must keep a Safety Data Sheet or other similar written information at the worksite, the employer must make that SDS or written information available to the medical facility treating the exposed entrant.
29 CFR 1926.1212(b)	Employers must make available to each affected employee and his/her authorized representatives all information they must develop under this standard.
29 CFR 1926.1213	Employers must disclose to the Secretary of Labor or the Secretary's designee all documents this standard requires them to retain.

The final rule imposes a program adjustment of 654,514 new burden hours to 30,066 construction-employment establishments after the effective date of the final standard.

Title of Collection: Confined Spaces in Construction (29 CFR 1926 subpart AA).

OMB Control Number: 1218–0258.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 30,066.

Total Estimated Number of Responses: 4,093,825.

Total Estimated Annual Time Burden: 654,514 hours.

Total Estimated Annual Other Costs Burden: $1,017,859.

D. Federalism

OSHA reviewed this final rule in accordance with the most recent Executive Order (E.O.) on Federalism (E.O. 13132, 64 FR 43255 (Aug. 10, 1999)). This E.O. requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. E.O. 13132 provides for preemption of State law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as ''State-Plan States'' (29 U.S.C. 667). Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. While OSHA promulgated this final rule to protect employees in every State, Section 18(c)(2) of the Act permits State-Plan States and Territories to develop and enforce their own standards for confined spaces work provided that those requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements in this final rule.

In summary, this final rule complies with E.O. 13132. In States without OSHA-approved State Plans, this final rule limits State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking does not significantly limit State policy options.

E. State-Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 27 states and U.S. Territories with their own OSHA-approved occupational safety and health plans must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, for example, because an existing state standard covering this area is ''at least as effective'' as the new Federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final Federal rule and must be completed within 6 months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State-Plan States do not have to amend their standards, although the Agency may encourage them to do so.

The 21 states and 1 U.S. Territory with OSHA-approved occupational safety and health plans covering private employers and state and local government employees are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. In addition, four states and one U.S. Territory have OSHA-approved State Plans that apply to state and local government employees only: Connecticut, Illinois, New Jersey, New York, and the Virgin Islands.

The requirements in this final rule are more stringent than all or most State plans for the work they cover. However, as discussed previously in this preamble, OSHA believes that State-Plan States that have standards applicable to construction work in confined spaces that are similar to 29 CFR 1910.146, the general industry standard for confined spaces, will not have to make major changes to their existing rules to ensure that these rules are at least as effective as this final rule. OSHA believes that the record warrants these changes so as to provide construction employees with the same level of protection afforded to them by this final rule. Therefore, states and territories with OSHA-approved State Plans must adopt comparable amendments to their standards within 6 months of the promulgation date of this rule unless they demonstrate that such amendments are not necessary because their existing standards are at least as effective in protecting workers as this final rule. Each State Plan State's existing requirements will continue to be in effect until that State adopts the required revisions.

F. Unfunded Mandates Reform Act

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and E.O. 13132 (64 FR 43255 (Aug. 10, 1999)). As discussed in the Final Economic and Regulatory Flexibility Analysis for this rulemaking, OSHA estimates that compliance with the rule will require expenditures of less than $100 million per year by all affected employers. Therefore, this rule is not a significant regulatory action within the meaning of Section 202 of UMRA (2 U.S.C. 1532).

OSHA standards do not apply to state or local governments except in states that elect voluntarily to adopt a State Plan approved by the Agency. Consequently, this final rule does not meet the definition of a ''Federal intergovernmental mandate'' (2 U.S.C. 658(5)).

Therefore, for the purposes of UMRA, the Agency certifies that this final rule does not mandate that state, local, or Tribal governments adopt new, unfunded regulatory obligations or increase expenditures by the private sector of more than $100 million in any year.

G. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175, (65 FR 67249 (Nov. 9, 2000)) and determined that it does not have ''tribal implications'' as defined in that order. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

H. Applicability of Existing Consensus Standards

Section 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b(8)) requires OSHA to explain why the rule adopted will better effectuate the purposes of the Act than relevant national consensus standards. The American National Standards Institute (ANSI) Z117.1 consensus standard (''Safety Requirements for Confined Spaces'') contains provisions addressing safety in confined spaces. The Agency consulted this standard in developing its proposed rule for confined spaces in construction, as well as in developing its general industry confined spaces standard. The Summary and Explanation section of this rule discusses OSHA's consideration of the requirements contained in ANSI Z–117.1 and other ANSI standards.

The Agency did not adopt the ANSI standard as the OSHA confined spaces in construction standard for several reasons. First, the Agency believes that the ANSI standard concentrates on confined spaces with oxygen-deficient

atmospheres, or with potential overexposures to air contaminants, without adequately addressing the full range of hazards that can occur in a confined space. In this regard, OSHA concurs with the findings it published in the preamble to the general industry confined spaces standard (58 FR 4464). After reviewing relevant publications by the National Institute for Occupational Safety and Health, the ANSI Z117.1 standards (both the 1989 and the 1977 editions), and the relevant guidelines developed by other organizations, the Agency decided to diverge from the approach used by those standards-development organizations because their documents do not provide sufficient guidance for employers to distinguish among the several types of confined space hazards they may encounter. Second, OSHA concludes that the structure and organization of the ANSI standard is not sufficiently user-friendly for small businesses, especially those that rarely deal with confined spaces. Third, OSHA finds that the ANSI standard does not adequately address construction-specific hazards, particularly where multiple employers are working in or around permit spaces. Fourth, OSHA notes that, in most instances, the wording of the provisions in these ANSI standards needed revision to improve enforceability, clarity, and ease of use. For example, much of the information in the consensus standard is presented as suggestions or non-mandatory guidance rather than enforceable imperative commands. Finally, most commenters expressed a preference for a rule that was similar to the general industry confined spaces standard. Agency incorporation of consensus standards can often facilitate rulemaking by avoiding duplicative Agency efforts and preventing potential confusion in the affected industries, but the widespread use of OSHA's general industry confined spaces standard suggests that, in this area, the Agency will be better able to facilitate worker safety and health by basing the new construction standard on the general industry standard rather than incorporating the ANSI standard.

List of Subjects in 29 CFR Part 1926

Confined space, Construction industry, Occupational safety and health, Permit space, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this document. OSHA is issuing this final rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 *et seq.;* 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on April 8, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this rule, the Agency is amending 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart C—General Safety and Health Provisions

■ 1. The authority citation for subpart C of 29 CFR part 1926 is revised to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 5–2007 (72 FR 31160), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

§ 1926.21 [Amended]

■ 2. In § 1926.21, paragraph (b)(6) is removed.

Subpart V—Electric Power Transmission and Distribution

■ 3. The authority citation for subpart V of part 1926 continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 1–2012 (77 FR 3912); and 29 CFR part 1911.

■ 4. Amend § 1926.953 by revising paragraphs (a) and (g) and the note at the end of the section to read as follows:

§ 1926.953 Enclosed spaces.

(a) *General.* This section covers enclosed spaces that may be entered by employees. It does not apply to vented vaults if the employer makes a determination that the ventilation system is operating to protect employees before they enter the space. This section applies to routine entry into enclosed spaces. If, after the employer takes the precautions given in this section and in § 1926.965, the hazards remaining in the enclosed space endanger the life of an entrant or could interfere with an entrant's escape from the space, then entry into the enclosed space must meet the permit space entry requirements of subpart AA of this part. For routine entries where the hazards remaining in the enclosed space do not endanger the life of an entrant or interfere with an entrant's escape from the space, this section applies in lieu of the permit-space entry requirements contained in §§ 1926.1204 through 926.1211.

* * * * *

(g) *Hazardous atmosphere.* Employees may not enter any enclosed space while it contains a hazardous atmosphere, unless the entry conforms to the confined spaces in construction standard in subpart AA of this part.

* * * * *

Note to § 1926.953.: Entries into enclosed spaces conducted in accordance with the permit space entry requirements of subpart AA of this part are considered as complying with this section.

■ 5. Amend § 1926.968 by adding a note to the definition for ''Enclosed spaces'' to read as follows:

§ 1926.968 Definitions.

* * * * *

Enclosed space. * * *

Note to the definition of ''Enclosed space''. The Occupational Safety and Health Administration does not consider spaces that are enclosed but not designed for employee entry under normal operating conditions to be enclosed spaces for the purposes of this subpart. Similarly, the Occupational Safety and Health Administration does not consider spaces that are enclosed and that are expected to contain a hazardous atmosphere to be enclosed spaces for the purposes of this subpart. Such spaces meet the definition of permit spaces in subpart AA of this part, and entry into them must conform to that standard.

* * * * *

■ 6. Subpart AA is added to read as follows:

Subpart AA—Confined Spaces in Construction

Sec.

1926.1200 [Reserved]
1926.1201 Scope.
1926.1202 Definitions.
1926.1203 General requirements.
1926.1204 Permit-required confined space program.
1926.1205 Permitting process.
1926.1206 Entry permit.
1926.1207 Training.
1926.1208 Duties of authorized entrants.
1926.1209 Duties of attendants.
1926.1210 Duties of entry supervisors.
1926.1211 Rescue and emergency services.
1926.1212 Employee participation.
1926.1213 Provision of documents to Secretary.

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 1–2012 (77 FR 3912); and 29 CFR part 1911.

§ 1926.1200 [Reserved]

§ 1926.1201 Scope.

(a) This standard sets forth requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces, subject to the exceptions in paragraph (b) of this section.

Note to paragraph (a). Examples of locations where confined spaces may occur include, but are not limited to, the following: Bins; boilers; pits (such as elevator, escalator, pump, valve or other equipment); manholes (such as sewer, storm drain, electrical, communication, or other utility); tanks (such as fuel, chemical, water, or other liquid, solid or gas); incinerators; scrubbers; concrete pier columns; sewers; transformer vaults; heating, ventilation, and air-conditioning (HVAC) ducts; storm drains; water mains; precast concrete and other pre-formed manhole units; drilled shafts; enclosed beams; vessels; digesters; lift stations; cesspools; silos; air receivers; sludge gates; air preheaters; step up transformers; turbines; chillers; bag houses; and/or mixers/reactors.

(b) *Exceptions.* This standard does not apply to:

(1) Construction work regulated by subpart P of this part (Excavations).

(2) Construction work regulated by subpart S of this part (Underground Construction, Caissons, Cofferdams and Compressed Air).

(3) Construction work regulated by subpart Y of this part (Diving).

(c) Where this standard applies and there is a provision that addresses a confined space hazard in another applicable OSHA standard, the employer must comply with both that requirement and the applicable provisions of this standard.

§ 1926.1202 Definitions.

The following terms are defined for the purposes of this subpart only:

Acceptable entry conditions means the conditions that must exist in a permit space, before an employee may enter that space, to ensure that employees can safely enter into, and safely work within, the space.

Attendant means an individual stationed outside one or more permit spaces who assesses the status of authorized entrants and who must perform the duties specified in § 1926.1209.

Authorized entrant means an employee who is authorized by the entry supervisor to enter a permit space.

Barrier means a physical obstruction that blocks or limits access.

Blanking or *blinding* means the absolute closure of a pipe, line, or duct by the fastening of a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore and that is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

Competent person means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has the authorization to take prompt corrective measures to eliminate them.

Confined space means a space that:

(1) Is large enough and so configured that an employee can bodily enter it;

(2) Has limited or restricted means for entry and exit; and

(3) Is not designed for continuous employee occupancy.

Control means the action taken to reduce the level of any hazard inside a confined space using engineering methods (for example, by ventilation), and then using these methods to maintain the reduced hazard level. Control also refers to the engineering methods used for this purpose. Personal protective equipment is not a control.

Controlling Contractor is the employer that has overall responsibility for construction at the worksite.

Note to the definition of "Controlling Contractor". If the controlling contractor owns or manages the property, then it is both a controlling employer and a host employer.

Double block and bleed means the closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.

Early-warning system means the method used to alert authorized entrants and attendants that an engulfment hazard may be developing. Examples of early-warning systems include, but are not limited to: Alarms activated by remote sensors; and lookouts with equipment for immediately communicating with the authorized entrants and attendants.

Emergency means any occurrence (including any failure of power, hazard control or monitoring equipment) or event, internal or external, to the permit space that could endanger entrants.

Engulfment means the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, crushing, or suffocation.

Entry means the action by which any part of a person passes through an opening into a permit-required confined space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space, whether or not such action is intentional or any work activities are actually performed in the space.

Entry Employer means any employer who decides that an employee it directs will enter a permit space.

Note to the definition of "Entry Employer". An employer cannot avoid the duties of the standard merely by refusing to decide whether its employees will enter a permit space, and OSHA will consider the failure to so decide to be an implicit decision to allow employees to enter those spaces if they are working in the proximity of the space.

Entry permit (permit) means the written or printed document that is provided by the employer who designated the space a permit space to allow and control entry into a permit space and that contains the information specified in § 1926.1206.

Entry rescue occurs when a rescue service enters a permit space to rescue one or more employees.

Entry supervisor means the qualified person (such as the employer, foreman, or crew chief) responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry as required by this standard.

Note to the definition of "Entry supervisor". An entry supervisor also may serve as an attendant or as an authorized entrant, as long as that person is trained and equipped as required by this standard for each role he or she fills. Also, the duties of entry supervisor may be passed from one individual to another during the course of an entry operation.

Hazard means a physical hazard or hazardous atmosphere. See definitions below.

Hazardous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note to paragraph (2) of the definition of "Hazardous atmosphere". This concentration may be approximated as a condition in which the combustible dust obscures vision at a distance of 5 feet (1.52 meters) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in subpart D of this part (Occupational Health and Environmental Control), or in subpart Z of this part (Toxic and Hazardous Substances), and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note to paragraph (4) of the definition of ''Hazardous atmosphere''. An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this definition.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note to paragraph (5) of the definition of ''Hazardous atmosphere''. For air contaminants for which OSHA has not determined a dose or permissible exposure limit, other sources of information, such as Safety Data Sheets that comply with the Hazard Communication Standard, § 1926.59, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

Host employer means the employer that owns or manages the property where the construction work is taking place.

Note to the definition of ''Host employer''. If the owner of the property on which the construction activity occurs has contracted with an entity for the general management of that property, and has transferred to that entity the information specified in § 1926.1203(h)(1), OSHA will treat the contracted management entity as the host employer for as long as that entity manages the property. Otherwise, OSHA will treat the owner of the property as the host employer. In no case will there be more than one host employer.

Hot work means operations capable of providing a source of ignition (for example, riveting, welding, cutting, burning, and heating).

Immediately dangerous to life or health (IDLH) means any condition that would interfere with an individual's ability to escape unaided from a permit space and that poses a threat to life or that would cause irreversible adverse health effects.

Note to the definition of ''Immediately dangerous to life or health''. Some materials—hydrogen fluoride gas and cadmium vapor, for example—may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12–72 hours after exposure. The victim ''feels normal'' after recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be ''immediately'' dangerous to life or health.

Inerting means displacing the atmosphere in a permit space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

Note to the definition of ''Intering''. This procedure produces an IDLH oxygen-deficient atmosphere.

Isolate or isolation means the process by which employees in a confined space are completely protected against the release of energy and material into the space, and contact with a physical hazard, by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; blocking or disconnecting all mechanical linkages; or placement of barriers to eliminate the potential for employee contact with a physical hazard.

Limited or restricted means for entry or exit means a condition that has a potential to impede an employee's movement into or out of a confined space. Such conditions include, but are not limited to, trip hazards, poor illumination, slippery floors, inclining surfaces and ladders.

Line breaking means the intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

Lockout means the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

Lower flammable limit or lower explosive limit means the minimum concentration of a substance in air needed for an ignition source to cause a flame or explosion.

Monitor or *monitoring* means the process used to identify and evaluate the hazards after an authorized entrant enters the space. This is a process of checking for changes that is performed in a periodic or continuous manner after the completion of the initial testing or evaluation of that space.

Non-entry rescue occurs when a rescue service, usually the attendant, retrieves employees in a permit space without entering the permit space.

Non-permit confined space means a confined space that meets the definition of a confined space but does not meet the requirements for a permit-required confined space, as defined in this subpart.

Oxygen deficient atmosphere means an atmosphere containing less than 19.5 percent oxygen by volume.

Oxygen enriched atmosphere means an atmosphere containing more than 23.5 percent oxygen by volume.

Permit-required confined space (permit space) means a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

Permit-required confined space program (permit space program) means the employer's overall program for controlling, and, where appropriate, for protecting employees from, permit space hazards and for regulating employee entry into permit spaces.

Physical hazard means an existing or potential hazard that can cause death or serious physical damage. Examples include, but are not limited to: Explosives (as defined by paragraph (n) of § 1926.914, definition of ''explosive''); mechanical, electrical, hydraulic and pneumatic energy; radiation; temperature extremes; engulfment; noise; and inwardly converging surfaces. Physical hazard also includes chemicals that can cause death or serious physical damage through skin or eye contact (rather than through inhalation).

Prohibited condition means any condition in a permit space that is not allowed by the permit during the period when entry is authorized. A hazardous atmosphere is a prohibited condition unless the employer can demonstrate that personal protective equipment (PPE) will provide effective protection for each employee in the permit space and provides the appropriate PPE to each employee.

Qualified person means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

Representative permit space means a mock-up of a confined space that has

entrance openings that are similar to, and is of similar size, configuration, and accessibility to, the permit space that authorized entrants enter.

Rescue means retrieving, and providing medical assistance to, one or more employees who are in a permit space.

Rescue service means the personnel designated to rescue employees from permit spaces.

Retrieval system means the equipment (including a retrieval line, chest or full body harness, wristlets or anklets, if appropriate, and a lifting device or anchor) used for non-entry rescue of persons from permit spaces.

Serious physical damage means an impairment or illness in which a body part is made functionally useless or is substantially reduced in efficiency. Such impairment or illness may be permanent or temporary and includes, but is not limited to, loss of consciousness, disorientation, or other immediate and substantial reduction in mental efficiency. Injuries involving such impairment would usually require treatment by a physician or other licensed health-care professional.

Tagout means:

(1) Placement of a tagout device on a circuit or equipment that has been deenergized, in accordance with an established procedure, to indicate that the circuit or equipment being controlled may not be operated until the tagout device is removed; and

(2) The employer ensures that:

(i) Tagout provides equivalent protection to lockout; or

(ii) That lockout is infeasible and the employer has relieved, disconnected, restrained and otherwise rendered safe stored (residual) energy.

Test or testing means the process by which the hazards that may confront entrants of a permit space are identified and evaluated. Testing includes specifying the tests that are to be performed in the permit space.

Note to the definition of ''Test or testing''. Testing enables employers both to devise and implement adequate control measures for the protection of authorized entrants and to determine if acceptable entry conditions are present immediately prior to, and during, entry.

Ventilate or *ventilation* means controlling a hazardous atmosphere using continuous forced-air mechanical systems that meet the requirements of § 1926.57 (Ventilation).

§ 1926.1203 General requirements.

(a) Before it begins work at a worksite, each employer must ensure that a competent person identifies all confined spaces in which one or more of the employees it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary.

(b) If the workplace contains one or more permit spaces, the employer who identifies, or who receives notice of, a permit space must:

(1) Inform exposed employees by posting danger signs or by any other equally effective means, of the existence and location of, and the danger posed by, each permit space; and

Note to paragraph (b)(1). A sign reading ''DANGER—PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER'' or using other similar language would satisfy the requirement for a sign.

(2) Inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space.

(c) Each employer who identifies, or receives notice of, a permit space and has not authorized employees it directs to work in that space must take effective measures to prevent those employees from entering that permit space, in addition to complying with all other applicable requirements of this standard.

(d) If any employer decides that employees it directs will enter a permit space, that employer must have a written permit space program that complies with § 1926.1204 implemented at the construction site. The written program must be made available prior to and during entry operations for inspection by employees and their authorized representatives.

(e) An employer may use the alternate procedures specified in paragraph (e)(2) of this section for entering a permit space only under the conditions set forth in paragraph (e)(1) of this section.

(1) An employer whose employees enter a permit space need not comply with §§ 1926.1204 through 1206 and §§ 1926.1208 through 1211, provided that all of the following conditions are met:

(i) The employer can demonstrate that all physical hazards in the space are eliminated or isolated through engineering controls so that the only hazard posed by the permit space is an actual or potential hazardous atmosphere;

(ii) The employer can demonstrate that continuous forced air ventilation alone is sufficient to maintain that permit space safe for entry, and that, in the event the ventilation system stops working, entrants can exit the space safely;

(iii) The employer develops monitoring and inspection data that supports the demonstrations required by paragraphs (e)(1)(i) and (ii) of this section;

(iv) If an initial entry of the permit space is necessary to obtain the data required by paragraph (e)(1)(iii) of this section, the entry is performed in compliance with §§ 1926.1204 through 1926.1211;

(v) The determinations and supporting data required by paragraphs (e)(1)(i), (ii), and (iii) of this section are documented by the employer and are made available to each employee who enters the permit space under the terms of paragraph (e) of this section or to that employee's authorized representative; and

(vi) Entry into the permit space under the terms of paragraph (e)(1) of this section is performed in accordance with the requirements of paragraph (e)(2) of this section.

Note to paragraph (e)(1). See paragraph (g) of this section for reclassification of a permit space after all hazards within the space have been eliminated.

(2) The following requirements apply to entry into permit spaces that meet the conditions set forth in paragraph (e)(1) of this section:

(i) Any conditions making it unsafe to remove an entrance cover must be eliminated before the cover is removed.

(ii) When entrance covers are removed, the opening must be immediately guarded by a railing, temporary cover, or other temporary barrier that will prevent an accidental fall through the opening and that will protect each employee working in the space from foreign objects entering the space.

(iii) Before an employee enters the space, the internal atmosphere must be tested, with a calibrated direct-reading instrument, for oxygen content, for flammable gases and vapors, and for potential toxic air contaminants, in that order. Any employee who enters the space, or that employee's authorized representative, must be provided an opportunity to observe the pre-entry testing required by this paragraph.

(iv) No hazardous atmosphere is permitted within the space whenever any employee is inside the space.

(v) Continuous forced air ventilation must be used, as follows:

(A) An employee must not enter the space until the forced air ventilation has eliminated any hazardous atmosphere;

(B) The forced air ventilation must be so directed as to ventilate the immediate areas where an employee is or will be present within the space and must

continue until all employees have left the space;

(C) The air supply for the forced air ventilation must be from a clean source and must not increase the hazards in the space.

(vi) The atmosphere within the space must be continuously monitored unless the entry employer can demonstrate that equipment for continuous monitoring is not commercially available or periodic monitoring is sufficient. If continuous monitoring is used, the employer must ensure that the monitoring equipment has an alarm that will notify all entrants if a specified atmospheric threshold is achieved, or that an employee will check the monitor with sufficient frequency to ensure that entrants have adequate time to escape. If continuous monitoring is not used, periodic monitoring is required. All monitoring must ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere. Any employee who enters the space, or that employee's authorized representative, must be provided with an opportunity to observe the testing required by this paragraph (e)(2)(vi).

(vii) If a hazard is detected during entry:

(A) Each employee must leave the space immediately;

(B) The space must be evaluated to determine how the hazard developed; and

(C) The employer must implement measures to protect employees from the hazard before any subsequent entry takes place.

(viii) The employer must ensure a safe method of entering and exiting the space. If a hoisting system is used, it must be designed and manufactured for personnel hoisting; however, a job-made hoisting system is permissible if it is approved for personnel hoisting by a registered professional engineer, in writing, prior to use.

(ix) The employer must verify that the space is safe for entry and that the pre-entry measures required by paragraph (e)(2) of this section have been taken, through a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification must be made before entry and must be made available to each employee entering the space or to that employee's authorized representative.

(f) When there are changes in the use or configuration of a non-permit confined space that might increase the hazards to entrants, or some indication that the initial evaluation of the space may not have been adequate, each entry employer must have a competent person reevaluate that space and, if necessary, reclassify it as a permit-required confined space.

(g) A space classified by an employer as a permit-required confined space may only be reclassified as a non-permit confined space when a competent person determines that all of the applicable requirements in paragraphs (g)(1) through (4) of this section have been met:

(1) If the permit space poses no actual or potential atmospheric hazards and if all hazards within the space are eliminated or isolated without entry into the space (unless the employer can demonstrate that doing so without entry is infeasible), the permit space may be reclassified as a non-permit confined space for as long as the non-atmospheric hazards remain eliminated or isolated;

(2) The entry employer must eliminate or isolate the hazards without entering the space, unless it can demonstrate that this is infeasible. If it is necessary to enter the permit space to eliminate or isolate hazards, such entry must be performed under §§ 1926.1204 through 1926.1211. If testing and inspection during that entry demonstrate that the hazards within the permit space have been eliminated or isolated, the permit space may be reclassified as a non-permit confined space for as long as the hazards remain eliminated or isolated;

Note to paragraph (g)(2). Control of atmospheric hazards through forced air ventilation does not constitute elimination or isolation of the hazards. Paragraph (e) of this section covers permit space entry where the employer can demonstrate that forced air ventilation alone will control all hazards in the space.

(3) The entry employer must document the basis for determining that all hazards in a permit space have been eliminated or isolated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification must be made available to each employee entering the space or to that employee's authorized representative; and

(4) If hazards arise within a permit space that has been reclassified as a non-permit space under paragraph (g) of this section, each employee in the space must exit the space. The entry employer must then reevaluate the space and reclassify it as a permit space as appropriate in accordance with all other applicable provisions of this standard.

(h) *Permit space entry communication and coordination.* (1) Before entry operations begin, the host employer must provide the following information, if it has it, to the controlling contractor:

(i) The location of each known permit space;

(ii) The hazards or potential hazards in each space or the reason it is a permit space; and

(iii) Any precautions that the host employer or any previous controlling contractor or entry employer implemented for the protection of employees in the permit space.

(2) Before entry operations begin, the controlling contractor must:

(i) Obtain the host employer's information about the permit space hazards and previous entry operations; and

(ii) Provide the following information to each entity entering a permit space and any other entity at the worksite whose activities could foreseeably result in a hazard in the permit space:

(A) The information received from the host employer;

(B) Any additional information the controlling contractor has about the subjects listed in paragraph (h)(1) of this section; and

(C) The precautions that the host employer, controlling contractor, or other entry employers implemented for the protection of employees in the permit spaces.

(3) Before entry operations begin, each entry employer must:

(i) Obtain all of the controlling contractor's information regarding permit space hazards and entry operations; and

(ii) Inform the controlling contractor of the permit space program that the entry employer will follow, including any hazards likely to be confronted or created in each permit space.

(4) The controlling contractor and entry employer(s) must coordinate entry operations when:

(i) More than one entity performs permit space entry at the same time; or

(ii) Permit space entry is performed at the same time that any activities that could foreseeably result in a hazard in the permit space are performed.

(5) After entry operations:

(i) The controlling contractor must debrief each entity that entered a permit space regarding the permit space program followed and any hazards confronted or created in the permit space(s) during entry operations;

(ii) The entry employer must inform the controlling contractor in a timely manner of the permit space program followed and of any hazards confronted or created in the permit space(s) during entry operations; and

(iii) The controlling contractor must apprise the host employer of the information exchanged with the entry entities pursuant to this subparagraph.

Note to paragraph (h). Unless a host employer or controlling contractor has or will have employees in a confined space, it is not required to enter any confined space to collect the information specified in this paragraph (h).

(i) If there is no controlling contractor present at the worksite, the requirements for, and role of, controlling contactors in this section must be fulfilled by the host employer or other employer who arranges to have employees of another employer perform work that involves permit space entry.

§ 1926.1204 Permit-required confined space program.

Each entry employer must:

(a) Implement the measures necessary to prevent unauthorized entry;

(b) Identify and evaluate the hazards of permit spaces before employees enter them;

(c) Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including, but not limited to, the following:

(1) Specifying acceptable entry conditions;

(2) Providing each authorized entrant or that employee's authorized representative with the opportunity to observe any monitoring or testing of permit spaces;

(3) Isolating the permit space and physical hazard(s) within the space;

(4) Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards;

Note to paragraph (c)(4). When an employer is unable to reduce the atmosphere below 10 percent LFL, the employer may only enter if the employer inerts the space so as to render the entire atmosphere in the space non-combustible, and the employees use PPE to address any other atmospheric hazards (such as oxygen deficiency), and the employer eliminates or isolates all physical hazards in the space.

(5) Determining that, in the event the ventilation system stops working, the monitoring procedures will detect an increase in atmospheric hazard levels in sufficient time for the entrants to safely exit the permit space;

(6) Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards;

(7) Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry, and ensuring that employees are not allowed to enter into, or remain in, a permit space with a hazardous atmosphere unless the employer can demonstrate that personal protective equipment (PPE) will provide effective protection for each employee in the permit space and provides the appropriate PPE to each employee; and

(8) Eliminating any conditions (for example, high pressure) that could make it unsafe to remove an entrance cover.

(d) Provide the following equipment (specified in paragraphs (d)(1) through (9) of this section) at no cost to each employee, maintain that equipment properly, and ensure that each employee uses that equipment properly:

(1) Testing and monitoring equipment needed to comply with paragraph (e) of this section;

(2) Ventilating equipment needed to obtain acceptable entry conditions;

(3) Communications equipment necessary for compliance with §§ 1926.1208(c) and 1926.1209(e), including any necessary electronic communication equipment for attendants assessing entrants' status in multiple spaces;

(4) Personal protective equipment insofar as feasible engineering and work-practice controls do not adequately protect employees;

Note to paragraph (d)(4). The requirements of subpart E of this part and other PPE requirements continue to apply to the use of PPE in a permit space. For example, if employees use respirators, then the respirator requirements in § 1926.103 (Respiratory protection) must be met.

(5) Lighting equipment that meets the minimum illumination requirements in § 1926.56, that is approved for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that will be present, and that is sufficient to enable employees to see well enough to work safely and to exit the space quickly in an emergency;

(6) Barriers and shields as required by paragraph (c)(4) of this section;

(7) Equipment, such as ladders, needed for safe ingress and egress by authorized entrants;

(8) Rescue and emergency equipment needed to comply with paragraph (i) of this section, except to the extent that the equipment is provided by rescue services; and

(9) Any other equipment necessary for safe entry into, safe exit from, and rescue from, permit spaces.

(e) Evaluate permit space conditions in accordance with the following paragraphs (e)(1) through (6) of this section when entry operations are conducted:

(1) Test conditions in the permit space to determine if acceptable entry conditions exist before changes to the space's natural ventilation are made, and before entry is authorized to begin, except that, if an employer demonstrates that isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer), the employer must:

(i) Perform pre-entry testing to the extent feasible before entry is authorized; and,

(ii) If entry is authorized, continuously monitor entry conditions in the areas where authorized entrants are working, except that employers may use periodic monitoring in accordance with paragraph (e)(2) of this section for monitoring an atmospheric hazard if they can demonstrate that equipment for continuously monitoring that hazard is not commercially available;

(iii) Provide an early-warning system that continuously monitors for non-isolated engulfment hazards. The system must alert authorized entrants and attendants in sufficient time for the authorized entrants to safely exit the space.

(2) Continuously monitor atmospheric hazards unless the employer can demonstrate that the equipment for continuously monitoring a hazard is not commercially available or that periodic monitoring is of sufficient frequency to ensure that the atmospheric hazard is being controlled at safe levels. If continuous monitoring is not used, periodic monitoring is required with sufficient frequency to ensure that acceptable entry conditions are being maintained during the course of entry operations;

(3) When testing for atmospheric hazards, test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors;

(4) Provide each authorized entrant or that employee's authorized representative an opportunity to observe the pre-entry and any subsequent testing or monitoring of permit spaces;

(5) Reevaluate the permit space in the presence of any authorized entrant or that employee's authorized representative who requests that the employer conduct such reevaluation because there is some indication that the evaluation of that space may not have been adequate; and

(6) Immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with this section.

(f) Provide at least one attendant outside the permit space into which entry is authorized for the duration of entry operations:

(1) Attendants may be assigned to more than one permit space provided the duties described in § 1926.1209 can be effectively performed for each permit space.

(2) Attendants may be stationed at any location outside the permit space as long as the duties described in § 1926.1209 can be effectively performed for each permit space to which the attendant is assigned.

(g) If multiple spaces are to be assigned to a single attendant, include in the permit program the means and procedures to enable the attendant to respond to an emergency affecting one or more of those permit spaces without distraction from the attendant's responsibilities under § 1926.1209;

(h) Designate each person who is to have an active role (as, for example, authorized entrants, attendants, entry supervisors, or persons who test or monitor the atmosphere in a permit space) in entry operations, identify the duties of each such employee, and provide each such employee with the training required by § 1926.1207;

(i) Develop and implement procedures for summoning rescue and emergency services (including procedures for summoning emergency assistance in the event of a failed non-entry rescue), for rescuing entrants from permit spaces, for providing necessary emergency services to rescued employees, and for preventing unauthorized personnel from attempting a rescue;

(j) Develop and implement a system for the preparation, issuance, use, and cancellation of entry permits as required by this standard, including the safe termination of entry operations under both planned and emergency conditions;

(k) Develop and implement procedures to coordinate entry operations, in consultation with the controlling contractor, when employees of more than one employer are working simultaneously in a permit space or elsewhere on the worksite where their activities could, either alone or in conjunction with the activities within a permit space, foreseeably result in a hazard within the confined space, so that employees of one employer do not endanger the employees of any other employer;

(l) Develop and implement procedures (such as closing off a permit space and canceling the permit) necessary for concluding the entry after entry operations have been completed;

(m) Review entry operations when the measures taken under the permit space program may not protect employees and revise the program to correct deficiencies found to exist before subsequent entries are authorized; and

Note to paragraph (m). Examples of circumstances requiring the review of the permit space program include, but are not limited to: Any unauthorized entry of a permit space, the detection of a permit space hazard not covered by the permit, the detection of a condition prohibited by the permit, the occurrence of an injury or near-miss during entry, a change in the use or configuration of a permit space, and employee complaints about the effectiveness of the program.

(n) Review the permit space program, using the canceled permits retained under § 1926.1205(f), within 1 year after each entry and revise the program as necessary to ensure that employees participating in entry operations are protected from permit space hazards.

Note to paragraph (n). Employers may perform a single annual review covering all entries performed during a 12-month period. If no entry is performed during a 12-month period, no review is necessary.

§ 1926.1205 Permitting process.

(a) Before entry is authorized, each entry employer must document the completion of measures required by § 1926.1204(c) by preparing an entry permit.

(b) Before entry begins, the entry supervisor identified on the permit must sign the entry permit to authorize entry.

(c) The completed permit must be made available at the time of entry to all authorized entrants or their authorized representatives, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed.

(d) The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit in accordance with § 1926.1206(b).

(e) The entry supervisor must terminate entry and take the following action when any of the following apply:

(1) Cancel the entry permit when the entry operations covered by the entry permit have been completed; or

(2) Suspend or cancel the entry permit and fully reassess the space before allowing reentry when a condition that is not allowed under the entry permit arises in or near the permit space and that condition is temporary in nature and does not change the configuration of the space or create any new hazards within it; and

(3) Cancel the entry permit when a condition that is not allowed under the entry permit arises in or near the permit space and that condition is not covered by paragraph (e)(2) of this section.

(f) The entry employer must retain each canceled entry permit for at least 1 year to facilitate the review of the permit-required confined space program required by § 1926.1204(n). Any problems encountered during an entry operation must be noted on the pertinent permit so that appropriate revisions to the permit space program can be made.

§ 1926.1206 Entry permit.

The entry permit that documents compliance with this section and authorizes entry to a permit space must identify:

(a) The permit space to be entered;

(b) The purpose of the entry;

(c) The date and the authorized duration of the entry permit;

(d) The authorized entrants within the permit space, by name or by such other means (for example, through the use of rosters or tracking systems) as will enable the attendant to determine quickly and accurately, for the duration of the permit, which authorized entrants are inside the permit space;

Note to paragraph (d). This requirement may be met by inserting a reference on the entry permit as to the means used, such as a roster or tracking system, to keep track of the authorized entrants within the permit space.

(e) Means of detecting an increase in atmospheric hazard levels in the event the ventilation system stops working;

(f) Each person, by name, currently serving as an attendant;

(g) The individual, by name, currently serving as entry supervisor, and the signature or initials of each entry supervisor who authorizes entry;

(h) The hazards of the permit space to be entered;

(i) The measures used to isolate the permit space and to eliminate or control permit space hazards before entry;

Note to paragraph (i). Those measures can include, but are not limited to, the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit spaces.

(j) The acceptable entry conditions;

(k) The results of tests and monitoring performed under § 1926.1204(e), accompanied by the names or initials of the testers and by an indication of when the tests were performed;

(l) The rescue and emergency services that can be summoned and the means (such as the equipment to use and the numbers to call) for summoning those services;

(m) The communication procedures used by authorized entrants and attendants to maintain contact during the entry;

(n) Equipment, such as personal protective equipment, testing equipment, communications equipment, alarm systems, and rescue equipment, to

be provided for compliance with this standard;

(o) Any other information necessary, given the circumstances of the particular confined space, to ensure employee safety; and

(p) Any additional permits, such as for hot work, that have been issued to authorize work in the permit space.

§ 1926.1207 Training.

(a) The employer must provide training to each employee whose work is regulated by this standard, at no cost to the employee, and ensure that the employee possesses the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this standard. This training must result in an understanding of the hazards in the permit space and the methods used to isolate, control or in other ways protect employees from these hazards, and for those employees not authorized to perform entry rescues, in the dangers of attempting such rescues.

(b) Training required by this section must be provided to each affected employee:

(1) In both a language and vocabulary that the employee can understand;

(2) Before the employee is first assigned duties under this standard;

(3) Before there is a change in assigned duties;

(4) Whenever there is a change in permit space entry operations that presents a hazard about which an employee has not previously been trained; and

(5) Whenever there is any evidence of a deviation from the permit space entry procedures required by § 1926.1204(c) or there are inadequacies in the employee's knowledge or use of these procedures.

(c) The training must establish employee proficiency in the duties required by this standard and must introduce new or revised procedures, as necessary, for compliance with this standard.

(d) The employer must maintain training records to show that the training required by paragraphs (a) through (c) of this section has been accomplished. The training records must contain each employee's name, the name of the trainers, and the dates of training. The documentation must be available for inspection by employees and their authorized representatives, for the period of time the employee is employed by that employer.

§ 1926.1208 Duties of authorized entrants.

The entry employer must ensure that all authorized entrants:

(a) Are familiar with and understand the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(b) Properly use equipment as required by § 1926.1204(d);

(c) Communicate with the attendant as necessary to enable the attendant to assess entrant status and to enable the attendant to alert entrants of the need to evacuate the space as required by § 1926.1209(f);

(d) Alert the attendant whenever:

(1) There is any warning sign or symptom of exposure to a dangerous situation; or

(2) The entrant detects a prohibited condition; and

(e) Exit from the permit space as quickly as possible whenever:

(1) An order to evacuate is given by the attendant or the entry supervisor;

(2) There is any warning sign or symptom of exposure to a dangerous situation;

(3) The entrant detects a prohibited condition; or

(4) An evacuation alarm is activated.

§ 1926.1209 Duties of attendants.

The entry employer must ensure that each attendant:

(a) Is familiar with and understands the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(b) Is aware of possible behavioral effects of hazard exposure in authorized entrants;

(c) Continuously maintains an accurate count of authorized entrants in the permit space and ensures that the means used to identify authorized entrants under § 1926.1206(d) accurately identifies who is in the permit space;

(d) Remains outside the permit space during entry operations until relieved by another attendant;

Note to paragraph (d). Once an attendant has been relieved by another attendant, the relieved attendant may enter a permit space to attempt a rescue when the employer's permit space program allows attendant entry for rescue and the attendant has been trained and equipped for rescue operations as required by § 1926.1211(a).

(e) Communicates with authorized entrants as necessary to assess entrant status and to alert entrants of the need to evacuate the space under § 1926.1208(e);

(f) Assesses activities and conditions inside and outside the space to determine if it is safe for entrants to remain in the space and orders the authorized entrants to evacuate the permit space immediately under any of the following conditions:

(1) If there is a prohibited condition;

(2) If the behavioral effects of hazard exposure are apparent in an authorized entrant;

(3) If there is a situation outside the space that could endanger the authorized entrants; or

(4) If the attendant cannot effectively and safely perform all the duties required under this section;

(g) Summons rescue and other emergency services as soon as the attendant determines that authorized entrants may need assistance to escape from permit space hazards;

(h) Takes the following actions when unauthorized persons approach or enter a permit space while entry is underway:

(1) Warns the unauthorized persons that they must stay away from the permit space;

(2) Advises the unauthorized persons that they must exit immediately if they have entered the permit space; and

(3) Informs the authorized entrants and the entry supervisor if unauthorized persons have entered the permit space;

(i) Performs non-entry rescues as specified by the employer's rescue procedure; and

(j) Performs no duties that might interfere with the attendant's primary duty to assess and protect the authorized entrants.

§ 1926.1210 Duties of entry supervisors.

The entry employer must ensure that each entry supervisor:

(a) Is familiar with and understands the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(b) Verifies, by checking that the appropriate entries have been made on the permit, that all tests specified by the permit have been conducted and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin;

(c) Terminates the entry and cancels or suspends the permit as required by § 1926.1205(e);

(d) Verifies that rescue services are available and that the means for summoning them are operable, and that the employer will be notified as soon as the services become unavailable;

(e) Removes unauthorized individuals who enter or who attempt to enter the permit space during entry operations; and

(f) Determines, whenever responsibility for a permit space entry operation is transferred, and at intervals dictated by the hazards and operations performed within the space, that entry

operations remain consistent with terms of the entry permit and that acceptable entry conditions are maintained.

§ 1926.1211 Rescue and emergency services.

(a) An employer who designates rescue and emergency services, pursuant to § 1926.1204(i), must:

(1) Evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified;

Note to paragraph (a)(1). What will be considered timely will vary according to the specific hazards involved in each entry. For example, § 1926.103 (Respiratory protection) requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) wearing respiratory protection while in work areas defined as IDLH atmospheres.

(2) Evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the particular permit space or types of permit spaces identified;

(3) Select a rescue team or service from those evaluated that:

(i) Has the capability to reach the victim(s) within a time frame that is appropriate for the permit space hazard(s) identified;

(ii) Is equipped for, and proficient in, performing the needed rescue services;

(iii) Agrees to notify the employer immediately in the event that the rescue service becomes unavailable;

(4) Inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site; and

(5) Provide the rescue team or service selected with access to all permit spaces from which rescue may be necessary so that the rescue team or service can develop appropriate rescue plans and practice rescue operations.

(b) An employer whose employees have been designated to provide permit space rescue and/or emergency services must take the following measures and provide all equipment and training at no cost to those employees:

(1) Provide each affected employee with the personal protective equipment (PPE) needed to conduct permit space rescues safely and train each affected employee so the employee is proficient in the use of that PPE;

(2) Train each affected employee to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required and establish proficiency as authorized entrants, as provided by §§ 1926.1207 and 1926.1208;

(3) Train each affected employee in basic first aid and cardiopulmonary resuscitation (CPR). The employer must ensure that at least one member of the rescue team or service holding a current certification in basic first aid and CPR is available; and

(4) Ensure that affected employees practice making permit space rescues before attempting an actual rescue, and at least once every 12 months, by means of simulated rescue operations in which they remove dummies, manikins, or actual persons from the actual permit spaces or from representative permit spaces, except practice rescue is not required where the affected employees properly performed a rescue operation during the last 12 months in the same permit space the authorized entrant will enter, or in a similar permit space. Representative permit spaces must, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.

(c) Non-entry rescue is required unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. The employer must designate an entry rescue service whenever non-entry rescue is not selected. Whenever non-entry rescue is selected, the entry employer must ensure that retrieval systems or methods are used whenever an authorized entrant enters a permit space, and must confirm, prior to entry, that emergency assistance would be available in the event that non-entry rescue fails. Retrieval systems must meet the following requirements:

(1) Each authorized entrant must use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrant's head, or at another point which the employer can establish presents a profile small enough for the successful removal of the entrant. Wristlets or anklets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use of a chest or full body harness is infeasible or creates a greater hazard and that the use of wristlets or anklets is the safest and most effective alternative.

(2) The other end of the retrieval line must be attached to a mechanical device or fixed point outside the permit space in such a manner that rescue can begin as soon as the rescuer becomes aware that rescue is necessary. A mechanical device must be available to retrieve personnel from vertical type permit spaces more than 5 feet (1.52 meters) deep.

(3) Equipment that is unsuitable for retrieval must not be used, including, but not limited to, retrieval lines that have a reasonable probability of becoming entangled with the retrieval lines used by other authorized entrants, or retrieval lines that will not work due to the internal configuration of the permit space.

(d) If an injured entrant is exposed to a substance for which a Safety Data Sheet (SDS) or other similar written information is required to be kept at the worksite, that SDS or written information must be made available to the medical facility treating the exposed entrant.

§ 1926.1212 Employee participation.

(a) Employers must consult with affected employees and their authorized representatives on the development and implementation of all aspects of the permit space program required by § 1926.1203.

(b) Employers must make available to each affected employee and his/her authorized representatives all information required to be developed by this standard.

§ 1926.1213 Provision of documents to Secretary.

For each document required to be retained in this standard, the retaining employer must make the document available on request to the Secretary of Labor or the Secretary's designee.

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Part III

Postal Service

39 CFR Part 111
New Mailing Standards for Domestic Mailing Services Products; Final Rule

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On April 16, 2015, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective May 31, 2015. This final rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to implement the changes coincident with the price adjustments and other minor DMM changes.

DATES: *Effective date:* May 31, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Key, 202–268–7492, John Rosato, 202–268–8597, or Suzanne Newman, 202–695–0550.

SUPPLEMENTARY INFORMATION: Prices are available under Docket Number R2015–4 on the Postal Regulatory Commission's Web site at *www.prc.gov*. The Postal Service's final rule includes changes to certain market dominant prices. Directly below, we discuss comments on proposed price changes, and the Postal Service's responses to those comments, followed by a summary of minor DMM changes.

Comments on Proposed Changes

Summary

The Postal Service received four formal responses to our proposed rule as comments, questions, or suggestions related to prices.

Changes to Prices

We received one formal question from a mailer on prices and three formal comments from mailers voicing opposition to the price increases. One mailer questioned why First-Class™ commercial automation prices in the PRC filing were slightly lower than the proposed prices posted on Postal Explorer®.

Response: We believe that the mailer was viewing the CPI prices without exigent surcharges within the filing; therefore, the customer was advised to view Attachment A, Part II, Changes to Mail Classification Schedule (CPI Prices + Exigent Surcharges) which was filed under Docket Number R2015–4 on the Postal Regulatory Commission's Web site at *www.prc.gov*.

One periodicals printer/mailer commented that the Industry as a whole were unaware of the Postal Service's intentions for price changes any time in 2015. This commenter recommended leaving the Exigent pricing in place as long as there were no additional increases for the next two to three years.

A fulfillment company which uses various classes of mail and serves both consumer and business customers, including commercial and non-profit, urged deferral of the proposed price increase for postage rates in 2015 until 2016, except for the increases applicable to Standard Mail® parcels. The commenter stated that the Postal Service did not signal postage increases for 2015, any time during 2014. Therefore, mailers/clients budgeted accordingly and any increases would cause the customers to mail less, if at all. The commenter continued that price increases in 2014 have already impacted mail volumes, and mailers are offering e-gifts, over postage and fulfillment costs. Further, with diminishing volumes due to price increases, the commenter suggested that the Postal Service pursue internal efficiency goals, including reducing the costs of labor, facilities, and processing instead of enacting postage increases.

Response: The Postal Service signaled its intention in January 2015 that new pricing, combined with increased efficiencies gained through network consolidation and improved processing, supported the overall strategic direction of the Postal Service.

One Mail Service Provider commented on the virtues of eDocumentation (eDoc) and seamless acceptance and directed his recommendation in support of future price increases to reduce the differences between automation and non-automation prices, to encourage more mailers to participate in eDoc, which is a requirement for seamless acceptance participation.

Response: The Postal Service appreciates the recommendation and will consider it during future pricing evaluations.

Changes to Extra Services

Certificate of Mailing

We received two comments from mailers related to the changes to Certificate of Mailing service, generally stating that there has not been a sufficient amount of notification for the changes, that mailers were not directly engaged in the development of these proposed changes, and the technical integration work required of the mailers to comply with the changes will take time and be a significant cost factor. There appeared to be some confusion on the actual extent of the changes proposed. One commenter further suggested that the Postal Service eliminate pursuing changes as mailers are moving toward electronic notifications instead of purchasing Certificate of Mailing service. The commenter also stated that the Postal Service should permit the two domestic Certificate of Mailing options to remain as they are today, and implement the new version as optional. The mailer also suggested that the Postal Service change the proposed rule to an Advanced Notice.

Response: To provide clarification, the proposed changes to Certificate of Mailing did not include eliminating the provision of a date stamp (postmark) on the forms, nor provision of the piece-level data from mail processing equipment. The current acceptance and sampling procedures were not changing.

Return Receipt After Mailing

We received two comments from mailers and one from mailer associations who disagreed with our proposal to retire Return Receipt after Mailing™ (RRAM). Opposition surrounded the flexibility and the costs to purchase return receipts at the time of mailing versus after mailing. One third-party mailer using Certified Mail® voiced concern that this appeared to be reducing the level of Certified Mail service.

Response: The Postal Service believes that allowing a mailer to purchase a return receipt at the time of mailing still provides the same or a preferable service to customers. A hard-copy return receipt purchased at the time of mailing provides the recipient's actual hardcopy signature when the mailpiece can be successfully delivered as addressed. A PS Form 3811–A, *Request for Delivery Information/Return Receipt After Mailing,* provides either *information from* the delivery record (recorded and postmarked by an employee on the form) or an electronic signature (electronic return receipt) provided to the mailer when an email address has been provided. Restricting the purchase of a return receipt to only at the time of mailing will eliminate manual efforts needed to process a hard-copy PS Form 3811–A. The cost of purchasing return receipt (PS Form 3811, *Domestic Return Receipt*) at the time of mailing (currently $2.70) or an electronic return receipt at the time of mailing (currently $1.35) are both significantly lower than the cost of purchasing a return receipt after mailing (currently $5.25). The Postal Regulatory Commission's Order 2388 on March 10, 2015, confirmed that the elimination of RRAM does not violate applicable law and regulations. Therefore, this product

will be removed from the Postal Service's product offering.

Other Comments

Three other formal comments were received; one comment on more than one item, one with a question not related to the proposed rulemaking, and one with a suggestion. One mailer association voiced displeasure regarding changes to FSS preparation, Certificate of Mailing, and the late fee proposed for overdue Address Correction Service fees. The association urged the Postal Service not to implement any price or mail preparation changes. Another mailer association commented that there were too many changes in the proposed rule and suggested that changes be separated into three or four separate proposals. One representative of a mailer association questioned the context of a DMM section mentioned in the proposed rule that was outside of the proposed rulemaking.

Response: The Postal Service has received prior feedback that changes should be combined and implemented simultaneously to help reduce the number of changes throughout a calendar year. Knowing the complete scope of what is planned helps vendors and mailers better understand the strategic vision of what is planned. The FSS changes in the proposal were a reflection of previous mailer feedback to continue to improve FSS pricing and mail preparation to obtain additional cost efficiencies. The late fees for Address Correction Services will be considered in the future and have been withdrawn from the final rule.

First-Class Mail Parcels

In November 2014, the Governors approved filing for the transfer of First-Class Mail® Parcels from a market dominant to a competitive product. The pleading was filed with the Postal Regulatory Commission (PRC) on November 14, 2014, Docket No. MC2015–7. As of this date, the PRC has not yet ruled on the filing, therefore, no changes to the standards for First-Class Mail Parcels are being announced as part of this final rule.

Return Receipt for Merchandise

The Postal Service has elected to defer its proposal to eliminate Return Receipt for Merchandise effective April 26, 2015, filed in Docket No. MC2015–8, following conditional approval received from the Commission (Order No. 2322, January 15, 2015). The Postal Service will continue to evaluate whether Return Receipt for Merchandise service will be eliminated in the future, and if so, a formal advanced notice would be provided.

Indemnity Claims and Refunds

In continuing our efforts to streamline and improve the refunds and claims processes for our customers, the Postal Service proposed that mailers would file their requests for any applicable extra service fee refunds using an online application instead of submitting hardcopy requests to the local Postmaster. Although the Postal Service has approval to proceed with this enhancement, the final implementation date is not yet determined and will be communicated in a future final rule.

Summary of Changes To Be Implemented

Changes for First-Class Mail Prices

The Postal Service will maintain the First-Class Mail single-piece stamp price at 49 cents, and the price for single-piece flats up to one ounce at 98 cents. The single-piece additional ounce and non-machinable surcharge prices will increase one cent to 22 cents. The Metered Mail price will increase modestly but will still remain below the single-piece stamp price. A complete list of approved prices for First-Class Mail™ is available under Docket Number R2015–4 on the Postal Regulatory Commission's Web site at *www.prc.gov*.

Package Services

Package Services (Alaska Bypass, Bound Printed Matter, Media Mail®, and Library Mail) prices were adjusted for these products.

Standard Mail Prices

Standard Mail prices were adjusted.

Periodicals Prices

Periodicals prices were adjusted.

Returns Simplification

The Postal Service is making several changes to merchandise return options. Customers may establish a single Return Services permit, and pay a single Return Services annual account maintenance fee at any Post Office, to receive any one, or a combination of, the following returns offerings:

- Merchandise Return Service (MRS), including USPS Returns paid using a scan-based payment method.
- Parcel Return Service (PRS).

Upon annual renewal, the Return Services permit and annual accounting fees will be waived for those mailers showing outbound package volume paid using their outbound permit imprint account within the prior year. The Postal Service is expanding the amount of insurance available for purchase with returns as detailed under the insurance section of this final rule. Additionally, Parcel Return Service—Full Network is eliminated as a general offering and retained only as an option for customers under a Negotiated Service Agreement (NSA).

Merchandise Return Service

The Postal Service will replace the use of market dominant First-Class Mail parcels, Package Services (Media Mail, Library Mail, and Bound Printed Matter), and Standard Post™ for MRS with First-Class Package Service and Parcel Select® Nonpresort (ground) products.

The Postal Service believes that our business mailers using MRS today can receive the same handling and delivery service options when using our commercially-priced products, or one of the other existing returns products. Additional changes to the DMM include removing obsolete language allowing MRS labels to be sent by fax. An IMpb is required by current standards on all MRS labels, and which align with standards prohibiting the faxing of MRS labels with USPS Tracking barcodes.

Bulk Parcel Return Service

The Postal Service will eliminate the BPRS annual permit and account maintenance fees as a requirement for the service. Additionally, in support of our visibility initiatives, all BPRS labels will require an IMpb. This change aligns with the IMpb requirement on all other return services labels for parcels, and on all outbound commercial parcels. All other requirements for participation will remain unchanged.

Extra Services

The following items represent the changes to extra services:

USPS Tracking

With this final rule, USPS Tracking will be included at no additional charge for First-Class Mail parcels, Media Mail, Library Mail, and Bound Printed Matter as long as the label includes an accurate Intelligent Mail package barcode (IMpb). USPS Tracking will still be available for purchase with Standard Mail parcels, including Marketing Parcels.

Insurance

The Postal Service will combine the domestic Priority Mail Express® merchandise insurance and the domestic general insurance tables into one table. No other changes will be made to the insurance included with Priority Mail Express and Priority Mail®, or to the options for purchasing

additional insurance for any applicable outbound product. However, the ability to purchase insurance coverage for USPS returns products will be expanded to allow either the Returns Services permit holder, or the sender using the returns label, to purchase insurance up to the current allowable limit of $5,000.00. There will be no other changes to the standard which disallows any ''included'' insurance coverage for returns products.

The Postal Service will adjust the insurance threshold for capturing the recipient's signature at the time of delivery from items insured for more than $200.00, to items insured for more than $500.00. Additionally, the delivery record (including a copy of the recipient's signature) will be provided to mailers at no additional charge for items insured for more than $500.00 (excludes insurance purchased for more than $500.00 for returns). Customers who want a signature for their outbound items insured for $500.00 or less can purchase Signature Confirmation™ service in addition to insurance.

Certified Mail

The Postal Service introduces three new combined offerings under Certified Mail® service:

- Certified Mail Restricted Delivery (available through all channels);
- Certified Mail Adult Signature Required;
- Certified Mail Adult Signature Restricted Delivery (available online and to commercial mailers only).

Restricted Delivery

The Postal Service will replace restricted delivery service, which is currently used as a separate add-on and price, with a combination of extra services (with which restricted delivery can be purchased today). Customers may choose from the following restricted delivery combined services:

- Certified Mail Restricted Delivery.
- Certified Mail Adult Signature Restricted Delivery.
- Collect on Delivery (COD) Restricted Delivery.
- Insurance (over $500.00) Restricted Delivery.
- Registered Mail™ Restricted Delivery.
- Signature Confirmation Restricted Delivery (expanded from online only, to include retail and commercial channels.)

Return Receipt

The Postal Service is adjusting the availability of a domestic return receipt from items insured for more than $200.00, to items insured for more than $500.00, which aligns with the threshold changes to insured mail for which USPS™ obtains a delivery record (that includes the recipient's signature). Additionally, the hardcopy PS Form 3811, *Domestic Return Receipt,* or any USPS-approved facsimile, will include an IMpb that will be electronically linked to the IMpb for the applicable extra service for the mailpiece. The IMpb on the return receipt will provide tracking visibility to mailers similar to that provided for other extra services requiring an IMpb.

The option for purchasing a return receipt after mailing is being eliminated. Mailers wishing to receive a copy of the delivery record (including the recipient's signature obtained at the time of delivery) will still be able to do so by purchasing the applicable extra service at the time of mailing.

USPS Signature Services

The Postal Service introduces a USPS Signature™ service umbrella which will encompass the various extra services that provide electronic signature data (including the recipient's signature obtained at the time of delivery). The basic standards for the extra services will remain unchanged. The USPS Signature services umbrella will encompass:

- Signature Confirmation.
- Signature Confirmation Restricted Delivery.
- Adult Signature Required *.
- Adult Signature Restricted Delivery *.

* This USPS Signature service is only available through online or commercial channels.

Adult Signature

Adult Signature Required and Adult Signature Restricted Delivery options are expanded to include First-Class Package Service and Parcel Select Lightweight® pieces purchased through commercial channels. Customers using these products are able to choose either Adult Signature Required (delivery to an individual with identification showing they are at least 21 years of age) or Adult Signature Restricted Delivery (delivery to an individual specified by name with identification showing who they are, and that they are at least 21 years of age).

Certificate of Mailing

The following changes related to domestic Certificate of Mailing service are being made: A new firm sheet, PS Form 3665, *Certificate of Mailing—Firm (Domestic),* is being introduced for commercial mailers presenting three or more mailpieces at one time (replacing the use of the PS Form 3877 firm sheet as domestic certificates of mailing) and a new PS Form 3606–D, *Certificate of Bulk Mailing (For Domestic Use)* (replacing the use of the current PS Form 3606). However, until further notice, the Postal Service will grant a grace period for forms implementation and allow mailers to use up existing supplies of current facsimiles (of either replaced form). This exception is universal in scope and does not require a unique request for an exception.

The additional changes to Certificate of Mailing service will limit the use of PS Form 3817, *Certificate of Mailing,* to fewer than three pieces presented at retail locations at one time, and PS Form 3665—Firm for three or more pieces presented at one time. Mailers presenting fewer than 50 pieces or 50 pounds (whichever amount is met first) of corresponding articles at one time, will be permitted to present PS Form 3665—Firm or PS Form 3606–D at retail Post Office™ locations. Mailers presenting at least 50 pieces or 50 pounds (whichever amount is met first; lesser amounts only if deemed reasonable by USPS management) of corresponding articles at one time, must do so at a Business Mail Entry Unit (BMEU) or USPS authorized DMU (Detached Mail Unit).

Collect on Delivery (COD)

PS Form 3816, *COD Mailing and Delivery Receipt,* used for Collect on Delivery (COD) service will be revised to include a Hold For Pickup and a street delivery option for mailers using online and commercial payment methods. Additionally, mailers will have the option to obtain Electronic Funds Transfer (EFT), in lieu of a postal money order, for remittance of COD payments made by cash. No fee is associated with remittances made via EFT; however, mailers must be authorized by the Postal Service to participate in the EFT option.

Special Handling

The Postal Service has redesigned special handling service by eliminating the weight threshold associated with special handling fees, and creating content-specific identifiers. Only the Fragile category will include a fee. The Postal Service added the following content-specific handling service codes under the special handling umbrella:

- Hazardous Material Transportation.
- Fragile.
- Perishable.

Changes to Flats

Incenting for Flats Sequencing System (FSS) Preparation

The Postal Service is adding a new FSS piece price for all FSS qualifying pieces for machinable barcoded (automation) flats and machinable non-barcoded/nonautomation flats. Sortation of High Density and High Density Plus Carrier Route flats will continue to be optional for inclusion in FSS scheme bundles. However, if included in the FSS sort, they will no longer be considered High Density or High Density Plus mailpieces and will pay the new FSS piece price.

High Density and High Density Plus mailers may continue to prepare their mail destined to FSS ZIPs as High Density and High Density Plus Carrier Route pieces and would sort, bundle, and containerize them as they would for Non-FSS ZIPs and pay the applicable High Density and High Density Plus prices. However, the Postal Service has added a new destination entry for these High Density and High Density Plus Carrier Route flats containers going to FSS zones. Mailers will be able to enter these containers at the applicable FSS facility and receive a DFSS entry price for these High Density or High Density Plus that is applicable to the DSCF entry price. All FSS scheme and facility containers (including sacks and flat trays) entered at an FSS facility will be eligible for the DFSS entry price for Periodicals, Standard Mail, and Bound Printed Matter (BPM) flats.

The Postal Service also added new destination entry pricing (DFSS) for eligible FSS scheme and facility containers for qualifying FSS Periodicals, Standard Mail flats and Bound Printed Matter flats. Besides enhanced FSS piece pricing and container specific DFSS destination entry pricing, Periodicals will also have bundle pricing for FSS scheme bundles and container prices for FSS Scheme and FSS Facility containers. All BPM flats pieces that bear addresses within FSS Zip-Codes™ must be sorted to FSS schemes. This includes pieces that are currently sorted to the 5-digit and Carrier Route level and dropped at the DDU. All qualified FSS schemed BPM flats will be reported as: Origin entry (None) zones 1–9 FSS scheme, DNDC entry zones 1–5 FSS scheme, DSCF entry FSS Scheme; or DFSS entry for the pieces in FSS scheme bundles in or on a FSS scheme container; or in FSS scheme bundles in or on a FSS facility container.

Incenting for 5-digit Pallets of Carrier Route Bundles

A new incentive is included for Periodicals and Standard Mail flats. There will be separate prices for carrier route pieces on 5-digit Carrier Routes or 5-digit Scheme Carrier Routes pallets which consist entirely of carrier route bundles for the same applicable 5-digit or 5-digit scheme.

2015 Promotions

The Postal Service will offer the following four mailing promotions in three categories in calendar year 2015 (details of these promotions will be available on RIBBS at *https://ribbs.usps.gov/index.cfm?page=mailingpromotions*:

Leverage Value of First-Class Mail

1. Earned Value Promotion; May 1–July 31
2. Color Transpromo Promotion; June 1–November 30

Mobile Technology—Standard Mail and First-Class Mail

3. Advanced and Emerging Technologies Promotion; June 1–November 30

Technology Drives Relevance—Standard Mail

4. Mail Drives Mobile Engagement Promotion; July 1–December 31

Ancillary Service Endorsements

Change Service Requested Option 2

The standards for the treatment of Standard Mail letters and flats, and Bound Printed Matter Flats will be revised to allow mailers an additional ancillary service endorsement option.

Other DMM Clarifications, Changes and Corrections

Return Call Tag (Print and Deliver Return Label Service) Name Change

This article serves as notice to customers that the Postal Service renames Call Tag Return Service (implemented in September 2014) as *Print and Deliver Return Label Service. Print and Deliver Return Label Service* provides an option for permit holders to electronically request that an applicable USPS-return label, which is then generated and delivered by USPS to their customer (label end-user).

Competitive Post Office (PO) Box Services

The Postal Service will clarify the language in the DMM standards for competitive PO Box™ service, when box holders in competitive locations use the optional street addressing enhancement. Customers who choose to use this designation also have the option of receiving packages from private carriers at their Post Office Box™ address. Packages from private carriers being delivered to a customer at a competitive Post Office Box service location, when using the street addressing designation option, do not require U.S. Postage to be affixed on the face of the package.

Standard Mail Marketing Parcels

Clarifying language will be added to the standards for Standard Mail™ Marketing Parcels to indicate that bulk insurance is not available because bulk insurance is already excluded by standards for items bearing an alternate address format.

Expedited Markings on Mailpieces

Clarification will be made to the mailing standards for use of expedited attention, handling, or delivery markings (*e.g.,* ''Urgent,'' ''Rush Delivery,'' or ''Time Sensitive'') on mailpieces. Over time, some mailers have expanded the use of these markings to classes of mail other than Standard Mail™ paid by permit imprint, as originally intended and described in the standards. In some cases the wording used has been expanded, risking or creating trademark infringements and false advertising. This final rule provides all mailers detailed standards for the use of expedited handling or delivery markings across all products and mailpieces.

Change of Address Orders by Phone

Revisions are being made to update standards for change of address orders made by phone. The corporate call center no longer accepts change-of-address orders, requiring customer authorization using a credit card. Customers may continue to make change-of-address orders online at *https://moversguide.usps.com* which requires customer verification using a credit card (authentication fee charged), by submitting PS Form 3575, *Change of Address Order,* or other written notice, to any Post Office.

Indemnity Claims and Refunds

Revisions are being made for claims to eliminate outdated or duplicate information as follows:

Proof of value: Invoices or bills of sales must be *paid* receipts, not solely a customer's statement and a picture from a catalog showing value of an item.

Payable claims: The USPS is not presumed to be at fault without any

physical damage to the package for live bees, crickets, and poultry.

Complete loss: If the insured, registered, or COD article is lost (not damaged), the payment includes an additional amount for the postage (not associated fee) paid by the sender.

Miscellaneous

Repositionable Notes (RPNs)

Clarification will be made in the DMM to remove references to the former price charged for RPNs which was eliminated.

Bound Printed Matter (BPM)

On December 15, 2014, the Postal Service published *Postal Bulletin* issue 22405, which revised the DMM to remove unnecessary language related to the former BPM barcode discount for flats which was replaced by a Full-Service Intelligent Mail option for BPM flats. This final rule revises the DMM further to remove residual references to the former barcode discount for BPM flats. The DMM language will be aligned with the Mail Classification Schedule which permits presorted or Carrier Route barcoded BPM flats to be prepared as Full-Service mailings. Although these corrections will not be published in the DMM until June 1, 2015, they may be followed immediately.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM).

* * * * *

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail

* * * * *

102 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

[Insert new 3.5 to read as follows:]

3.5 Marking Expedited Handling on Mail

Mailpieces bearing references to expedited handling or delivery (*e.g.,* ''Urgent,'' ''Rush Delivery,'' ''Time Sensitive'') must meet the requirements under 604.5.3.5.

* * * * *

140 Every Door Direct Mail—Retail (EDDM-Retail)

143 Prices and Eligibility

* * * * *

2.0 Content Standards for EDDM—Retail Flats

* * * * *

2.5 Attachments and Enclosures

[Revise the third sentence of the introductory text of 2.5 to read as follows:]

EDDM—Retail flats may bear Repositionable Notes under 202.7.0.

* * * * *

200 Commercial Mail

201 Physical Standards

* * * * *

3.0 Physical Standards for Machinable and Automation Letters and Cards

* * * * *

3.18 Enclosed Reply Cards and Envelopes

[Revise the second sentence of 3.18 to read as follows:]

* * *For Business Reply Mail (BRM) see 505.1.0, for pre-paid reply mail (also known as Metered Reply Mail) or Courtesy Reply Mail (CRM) see 505.2.6.

4.0 Physical Standards for Flats

* * * * *

4.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

[Revise the introductory text of 4.7 to read as follows:]

Flat-size mailpieces that do not meet the standards in 4.3 through 4.6 must pay applicable higher prices as follows:

* * * * *

b. * * * Under the column heading ''eligibility as presented,'' flats will be considered to be presented as automation flats only if they meet all other eligibility standards for automation flats.

[Revise Exhibit 4.7b, Pricing for Flats Exceeding Maximum Deflection, to read as follows:]

Exhibit 4.7b Pricing for Flats Exceeding Maximum Deflection (see 4.6)

FIRST-CLASS MAIL AUTOMATION						
*	*	*	*	*	*	*

FIRST-CLASS MAIL PRESORTED (NONAUTOMATION)						
*	*	*	*	*	*	*

PERIODICALS OUTSIDE COUNTY	
Piece price eligibility as presented	*Piece price eligibility with failed deflection.*
Basic Carrier Route flat, if not entered at a DDU	Machinable 5-digit flat.
Machinable barcoded FSS	Nonmachinable barcoded 5-digit flat.
Machinable barcoded 5-digit flat	Nonmachinable barcoded 5-digit flat.
Machinable barcoded 3-digit flat	Nonmachinable barcoded 3-digit flat.
Machinable barcoded ADC flat	Nonmachinable barcoded ADC flat.

Machinable barcoded MADC flat	Nonmachinable barcoded MADC flat.
Machinable nonbarcoded FSS	Nonmachinable nonbarcoded 5-digit flat.
Machinable nonbarcoded 5-digit flat	Nonmachinable nonbarcoded 5-digit flat.
Machinable nonbarcoded 3-digit flat	Nonmachinable nonbarcoded 3-digit flat.
Machinable nonbarcoded ADC flat	Nonmachinable nonbarcoded ADC flat.
Machinable nonbarcoded MADC flat	Nonmachinable nonbarcoded MADC flat.
Nonmachinable barcoded or nonbarcoded flat	Price claimed, if otherwise eligible.

PERIODICALS IN–COUNTY

* * * * * * *

STANDARD MAIL

Eligibility as presented	*Eligibility with failed deflection*
Basic Carrier Route flat, if not entered at a DDU	Nonautomation 5-digit flat.
Automation FSS Sch Pallet	Nonautomation FSS Sch Pallet.
Automation FSS Other	Nonautomation FSS Other.
Automation FSS Sch Cont.	Nonautomation FSS Sch Cont.
Automation FSS Facility Cont.	Nonautomation FSS Facility Cont.
Automation 5-digit flat	Nonautomation 5-digit flat.
Automation 3-digit flat	Nonautomation 3-digit flat.
Automation ADC flat	Nonautomation ADC flat.
Automation MADC flat	Nonautomation MADC flat.
Nonautomation flat (all sort levels)	Nonautomation MADC flat.

BOUND PRINTED MATTER

Eligibility as presented	*Eligibility with failed deflection.*
Carrier Route flat, if not entered at a DDU	Carrier Route parcel.
Barcoded/nonbarcoded presorted flat	Presorted parcel.
Barcoded/nonbarcoded FSS Sch flat	Presorted parcel Price as claimed, if otherwise eligible.
Nonbarcoded nonpresorted flat.	

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

[Insert new 3.5.1 to read as follows:]

3.5.1 Marking Expedited Handling on Mail

Mailpieces bearing references to expedited handling or delivery (*e.g.,* ''Urgent,'' ''Rush Delivery,'' ''Time Sensitive'') must meet the requirements under 604.5.3.5.

* * * * *

5.0 Barcode Placement Letters and Flats

* * * * *

5.2 Flat-Size

5.2.1 Barcode Placement for Flats

[Revise the third sentence of 5.2.1 to read as follows:]

* * * The portion of the surface of the piece on which the Intelligent Mail barcode is printed must meet the barcode dimensions and spacing requirements in 708.4.0. * * *

* * * * *

7.0 Repositionable Notes (RPNs)

7.1 Use

[Revise the introductory sentence to read as follows:]

RPNs are not assessed a fee when used, and must meet all of the following standards:

* * * * *

[Revise the text of item 7.1f to read as follows:]

f. Attach the RPNs to all pieces in the mailing, except as provided for non-identical manifested mail.

* * * * *

[Delete 7.5, Prices, in its entirety and renumber current 7.6, Compliance, as new 7.5.]

* * * * *

207 Periodicals

* * * * *

2.0 Price Application and Computation

* * * * *

2.1 Price Application

* * * * *

2.1.8 Applying Outside-County Bundle Prices

* * * The following additional standards apply:

* * * * *

[Revise the text of 2.1.8 item b to read as follows:]

b. For bundles with both In-County and Outside-County pieces, mailers do not pay the bundle charge for carrier route, 5-digit/scheme bundles and FSS scheme bundles.

* * * * *

2.2 Computing Postage

* * * * *

2.2.8 Total Postage

[Revise the text of 2.2.8 to read as follows:]

Total Outside-County postage is the sum of the per pound and per piece charges, the bundle charges, the container charges, and any Ride-Along charges; minus all discounts, rounded off to the nearest whole cent. Total In-County postage is the sum of the per pound and per piece charges, and any

Ride-Along charges, less all discounts, rounded off to the nearest whole cent.

* * * * *

12.0 Nonbarcoded (Presorted) Eligibility

* * * * *

12.3 Prices—In-County

12.3.1 Five-Digit Prices

5-digit prices apply to:

* * * * *

[Revise item 12.3.1c to read as follows:]

c. Qualifying flats sorted to a FSS scheme under 705.14.0.

12.3.2 Three-Digit Prices

3-digit prices apply to:

* * * * *

[Delete item 12.3.2c in its entirety]

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

* * * Carrier route prices apply to copies that are prepared in carrier route bundles of six or more addressed pieces each, subject to these standards:

* * * * *

b. *Nonletter-size mailings.* Carrier route prices apply to carrier route bundles that are sorted in one of the following ways:

* * * * *

[Delete 13.2.1b item 4 in its entirety]

* * * * *

13.3 Walk-Sequence Prices

13.3.1 Eligibility

[Revise the second sentence of 13.3.1 to read as follows:]

* * * High density and saturation mailings must be prepared in carrier walk sequence according to USPS schemes see 23.8.

* * * * *

14.0 Barcoded (Automation) Eligibility

14.1 Basic Standards

All pieces in a Periodicals barcoded (automation) mailing must:

* * * * *

[Revise 14.1 item d to read as follows:]

d. Be marked, sorted, and documented as specified in 705.8.0 (if palletized); or 24.0 (for letters) or 25.0 (for flats) or; for nonletter-size mail, 705.9.0, 705.10.0, 705.12.0, or 705.13.0; or for nonletter-size mail, bundles prepared on or in pallets, trays, sacks or other approved container under 705.14.0.

* * * * *

14.2 Eligibility Standards for Full-Service Automation Periodicals

All pieces entered under the full-service automation option must:

* * * * *

[Revise 14.2 item c to read as follows:]

c. Be scheduled for an appointment through the Facility Access and Shipment Tracking (FAST) system when deposited as a DNDC, DADC, DSCF, or DFSS drop shipment.

* * * * *

14.4 Prices—In-County

14.4.1 Five-Digit Prices

5-digit automation prices apply to:

* * * * *

[Revise 14.4.1 item c to read as follows:]

c. Qualifying flats sorted to a FSS scheme under 705.14.0.

* * * * *

14.4.2 Three-Digit Prices

3-digit automation prices apply to:

* * * * *

[Delete 14.4.2 item c in its entirety]

* * * * *

17.0 Documentation

* * * * *

17.4 Detailed Zone Listing for Periodicals

17.4.1 Basic Standards

[Revise the first sentence of 17.4.1 to read as follows:]

The publisher must be able to present documentation to support the actual number of copies of each edition of an issue, by entry point, mailed to each zone, at DDU, DSCF, DADC, DFSS and In-County prices.* * *

* * * * *

17.4.2 Format

Report the number of copies mailed to each 3-digit ZIP Code area at zone prices using one of the following formats:

* * * * *

[Revise the first sentence of 17.4.2 item b to read as follows:]

b. Report copies by zone (In-County DDU, In-County others, Outside-County DDU, Outside-County DFSS, Outside-County DSCF, and Outside-County DADC) and by 3-digit ZIP Code, in ascending numeric order, for each zone. ***

17.4.3 Zone Abbreviations

[Revise the text of 17.4.3 to read as follows:]

Use the actual price name or the authorized zone abbreviation in the listings in 17.3 and 17.4.2.

Zone abbreviation	Price equivalent
ICD	In-County, DDU.
IC	In-County, Others.
DDU	Outside-County, DDU.
FSS	Outside-County, DFSS.
SCF	Outside-County, DSCF.
ADC	Outside-County, DADC.
1–2 or 1/2	zones 1 and 2.
3, 4, 5, 6, 7, 8 (as applicable)	zones 3 through 8 (as applicable).
M	mixed zones.

* * * * *

18.0 General Mail Preparation

* * * * *

18.3 Presort Terms

Terms used for presort levels are defined as follows:

* * * * *

[Redesignate current items 18.3c through 18.3t as new items 18.3d through 18.3u, then, add new item18.3c to read as follows:]

c. FSS scheme for flats: The ZIP Code in the delivery address on all pieces in the FSS bundle is one of the 5-digit ZIP Codes processed by the USPS as one scheme as shown in L006.

* * * * *

18.5 FSS Preparation

[Revise the text of 18.5 to read as follows:]

Flat sized Periodicals In-County priced mailings, along with a maximum of 5,000 Outside-County pieces for the same issue (see 207.1.1.4) and flats mailed at Saturation (Non-simplified addressed) and High Density prices may be optionally sorted under FSS preparation standards. All other Periodicals flats destinating and qualifying to FSS zones in L006, must be prepared under 705.14.0.

* * * * *

26.0 Physical Criteria for Nonmachinable Flat-Size Periodicals

* * * * *

26.3 Flexibility and Deflection

[Revise the text of 26.3 to read as follows:]

Nonmachinable flats (under 26.0) are not subject to flexibility standards or deflection standards in 201.4.0.

* * * * *

29.0 Destination Entry

29.1 Basic Standards

* * * The following standards apply:

* * * * *

[Revise 29.1 item c to read as follows:]

c. The advertising and nonadvertising portions may be eligible for DADC, DSCF, DFSS, or DDU pound prices based on the entry facility and the address on the piece.

* * * * *

29.5 Destination Flat Sequencing System (DFSS) Entry

29.5.1 Definition

[Revise 29.5.1 to read as follows:]

For this standard, destination Flat Sequencing System (DFSS) refers to the facilities listed in L006, Scheme, Column B or Facility, Column C.

29.5.2 Eligibility

[Revise 29.5.2 to read as follows:]

DFSS prices apply to eligible FSS pieces deposited at a USPS-designated FSS processing facility and correctly placed in a flat tray, sack, alternate approved container or on a pallet, labeled to a FSS scheme processed by that facility, under labeling list L006. These pieces must include a complete address and meet the physical standards for machinable flats in 201. Eligibility also applies to Carrier Route High Density containers properly prepared under 207.23 for FSS ZIPs.

* * * * *

240 Commercial Mail Standard Mail

* * * * *

243 Prices and Eligibility

* * * * *

3.0 Basic Eligibility Standards for Standard Mail

* * * * *

3.2 Defining Characteristics

* * * * *

3.2.2 Standard Mail Marketing Parcels

[Revise 3.2.2 by inserting a new last sentence to read as follows:]

* * * USPS Tracking is the only extra service available for Standard Mail Marketing parcels.

* * * * *

3.2.8 Extra Services

[Revise the text of 3.2.8 to read as follows:]

See information regarding available extra services under 503.0.

* * * * *

4.0 Price Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Prices

* * * * *

[Revise the third sentence of 4.2 item c to read as follows:]

* * * Except for Customized MarketMail pieces, discounted per piece prices also may be claimed for destination entry mailings (destination flat sequencing sorter (DFSS), destination network distribution center (DNDC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under 246.

* * * * *

4.3 Piece/Pound Prices

[Revise the last sentence of 4.3 to read as follows:]

* * * Discounted per pound prices also may be claimed for destination entry mailings (destination flat sequencing sorter (DFSS), destination network distribution center (DNDC), and destination sectional center facility (DSCF)) under 246.

* * * * *

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Letters, Flats, and Presorted Standard Mail Parcels

* * * * *

5.6 Nonautomation Price Application—Flats

5.6.1 5-Digit Prices for Flats

The 5-digit price applies to flat-size pieces:

[Revise the text of 5.6.1 item a to read as follows:]

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a 5-digit/scheme sack containing at least 125 pieces or 15 pounds of pieces.

* * * * *

5.6.2 3-Digit Prices for Flats

The 3-digit price applies to flat-size pieces:

* * * * *

[Delete 5.6.2 item c in its entirety.]

* * * * *

[Insert new 5.6.5 and 5.6.6 to read as follows:]

5.6.5 FSS Scheme Piece Price for Flats

The FSS Scheme Price applies to flat-size pieces:

a. In an FSS Scheme bundle of at least 10 or more pieces, no matter the container level.

b. The FSS Scheme Pallet price applies to the piece price for flat-sized pieces on a FSS scheme pallet with bundles of 10 or more FSS-schemed pieces properly prepared under 705.14.0.

5.6.6 Mixed ADC Prices for Flats

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices; placed in mixed ADC sacks or on ASF, NDC, or mixed NDC pallets under 705.8.0.

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters and Flats

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.3 Basic Price Eligibility–Flats

Basic prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

* * * * *

[Delete 6.3.3 item e in its entirety]

[Add new item 6.3.4 to read as follows:]

6.3.4 Basic Carrier Route Bundles on a 5-digit Pallet (Basic–CR Bundles/Pallet) Price Eligibility–Flats

Basic—CR Bundles/Pallet prices apply to each piece in a carrier route bundle of 10 or more pieces that are palletized under 705.8.0 on a 5-digit carrier route or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC, DSCF, or DDU entry.

* * * * *

6.5 High Density and High Density Plus (Enhanced Carrier Route) Standards—Flats

* * * * *

6.5.2 High Density and High Density Plus Prices for Flats

[Revise the introductory text of 6.5.2 to read as follows:]

High density or high density plus prices apply to each piece meeting the density standards in 6.5.1 or in a carrier route bundle of 10 or more pieces that is:

* * * * *

7.0 Eligibility Standards for Automation Standard Mail

* * * * *

7.5 Price Application for Automation Flats

[Revise 7.5 in its entirety to read as follows:]

Automation prices apply to each piece properly sorted into qualifying groups:

a. The 5-digit price applies to flat-size pieces in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable;

b. The 3-digit price applies to flat-size pieces in a 3-digit/scheme bundle of 10 or more pieces.

c. The ADC price applies to flat-size pieces in an ADC bundle of 10 or more pieces.

d. The mixed ADC price applies to flat-size pieces in mixed ADC bundles (no minimum).

e. The FSS Scheme Pallet price applies to the piece price for flat-sized pieces on a FSS scheme pallet with bundles of 10 or more FSS-schemed pieces properly prepared under 705.14.0.

f. The FSS Other price applies to the piece price for flat-sized pieces in or on any container other than a FSS Scheme pallet with bundles of 10 or more FSS-schemed pieces properly prepared under 705.14.0.

g. The FSS Scheme Container price (DFSS Entry only) applies to the piece price for flat-sized pieces on or in a FSS scheme container with bundles of 10 or more FSS-schemed pieces properly prepared under 705.14.0 and dropped at a DFSS.

h. The FSS Facility Container (DFSS Entry Only) price applies to the piece price for flat-sized pieces in or on a FSS facility container with bundles of 10 or more FSS-schemed pieces properly prepared under 705.14.0 and dropped at a DFSS.

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.6 FSS Preparation

[Revise the text of 1.6 to read as follows:]

Except for Standard Mail flats mailed at Saturation, High Density, or High-Density Plus prices, all Standard Mail flats destinating to a FSS scheme in accordance with labeling list L006 must be prepared under 705.14.0.

* * * * *

246 Enter and Deposit

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

* * * * *

4.2.2 Flats

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

* * * * *

[Revise text of 4.2.2 item c to read as follows:]

c. DSCF prices apply to all pieces on or in a FSS Scheme or FSS Facility container when entered at a DSCF facility and any of the pieces on or in the container are addressed for delivery within that DSCF's service area. DSCF prices also apply to high density and high density plus carrier route containers entered at a DFSS facility.

[Insert a new item d to read as follows:]

d. DSCF prices apply to high density and high density plus pieces on a 5-digit or 5-digit scheme container entered at a Flat Sequencing System (FSS) facility for pieces that are not addressed for that facility's FSS ZIPs.

* * * * *

[Revise the title of 6.0 to read as follows:]

6.0 Destination Flat Sequencing System (DFSS) Facility Entry

6.1 Definition

[Revise the text of 6.1 to read as follows:]

Destination Flat Sequencing System (DFSS) refers to the facilities listed in L006.

6.2 Eligibility

[Revise the text of 6.2 to read as follows:]

DFSS prices apply to pieces deposited at a USPS-designated FSS processing site and correctly placed in or on a container labeled to a FSS scheme or FSS Facility processed by that site under labeling list L006 (Column B or Column C). These pieces must include a full delivery address and meet the physical standards for FSS machinability in 705.14.0.

* * * * *

260 Commercial Mail Bound Printed Matter

263 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

Apply the prices and discounts for nonpresorted Bound Printed Matter (BPM) as follows:

1.1.1 Prices

[Revise text of 1.1.1 to read as follows:]

BPM prices are based on the weight of a single addressed piece or one pound, whichever is higher, and the zone to which the piece is addressed. The nonpresorted price applies to BPM not mailed at the Presorted, FSS scheme or carrier route prices. For prices, see Notice 123, *Price List.*

* * * * *

[Delete item 1.1.4 in its entirety.]

1.2 Commercial Bound Printed Matter

* * * * *

1.2.3 Price Application

[Revise the text of 1.2.3 to read as follows:]

The presorted, FSS scheme, FSS scheme container, and FSS facility container Bound Printed Matter price has a per piece charge and a per pound charge. The minimum postage price for an addressed piece is one unit of the per piece charge plus the per pound charge for an addressed piece weighing one pound. Deduct the Full-Service Intelligent Mail per-piece discount for each presorted flat (except pieces mailed at carrier route prices) that complies with the Full-Service Intelligent Mail option requirements under 705.23.0.

[Revise the title and text of 1.2.4 to read as follows:]

1.2.4 Bound Printed Matter Carrier Route Prices

Each piece is subject to both a piece price and a pound price. Deduct the Full-Service Intelligent Mail per-piece discount for each presorted flat that complies with the Full-Service Intelligent Mail option requirements under 705.23.0.

1.2.5 Bound Printed Matter Destination Entry Prices

[Revise the second sentence of 1.2.5 to read as follows:]

* * * Deduct the Full-Service Intelligent Mail per-piece discount for each presorted or Carrier Route barcoded flats that complies with the Full-Service Intelligent Mail option requirements under 705.23.0. * * *

1.2.6 Destination Entry Mailing Fee

[Revise the text of the last sentence of 1.2.6 to read as follows:]

* * * Payment of this fee is waived for mailers who present only qualified full-service flat-size automation mailings under 705.23.

* * * * *

1.2.8 Computing Postage for Permit Imprint

[Revise introductory text of 1.2.8 to read as follows:]

Presorted, FSS Presorted and Carrier Route Bound Printed Matter mailings paid with permit imprint are charged a per pound price and a per piece price as follows:

* * * * *

4.0 Price Eligibility for Bound Printed Matter

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Revise the second sentence of item b to read as follows:]

b. Presorted Price. The Presorted price applies to BPM prepared in a mailing of at least 300 BPM pieces, prepared and presorted as specified in 265.5.0, 265.8.0, 705.8.0, and 705.21.

[Renumber current 4.1 items c as new item d, then, insert new item c to read as follows:]

* * * * *

c. FSS Scheme Presorted Price. This price applies to BPM flats prepared in a mailing of at least 300 BPM pieces, prepared and presorted as specified in 705.14.0.

* * * * *

[Revise the heading of 6.0 to read as follows:]

6.0 Additional Eligibility Standards for Full-Service Bound Printed Matter Flats

* * * * *

265 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.6 FSS Preparation

[Revise the text of 1.6 to read as follows:]

BPM flats claiming FSS presorted scheme prices, meeting the standards in 201.0 and destinating to a FSS scheme in accordance with labeling list L006, must be prepared under 705.14.0.

* * * * *

5.0 Preparing Presorted Flats

* * * * *

5.3 Sacking

* * * * *

5.3.4 Cosacking Presorted Mail With Barcoded Mail

[Revise the entire text of 5.3.4 to read as follows:]

The following standards apply if the mailing job contains a carrier route mailing, and a Presorted mailing, then the carrier route mailing must be prepared under 6.0, and the Presorted mailing must be co-sacked under 705.9.0. Bundled pieces must be co-sacked under 705.9.0.

* * * * *

7.0 Preparing Barcoded Flats

7.1 Basic Standards

[Revise the first sentence of 7.1 to read as follows:]

Flat-size Bound Printed Matter pieces claiming the Full-Service discount must be prepared under 7.0 and the eligibility standards for the price claimed. * * *

* * * * *

266 Enter and Deposit

* * * * *

5.0 Destination Sectional Center Facility (DSCF) Entry

5.1 Eligibility

Bound Printed Matter pieces in a mailing meeting the standards in 3.0 are eligible for the DSCF price when they meet all of the following additional conditions:

* * * * *

b. Are deposited at:

* * * * *

[Revise the text of 5.1b item 2 to read as follows:]

2. DSCF prices apply to all pieces on or in a FSS Scheme or FSS Facility container when entered at a DSCF facility when any of the pieces on or in the container are addressed for delivery within that DSCF's service area.

* * * * *

[Insert new 7.0 to read as follows:]

7.0 Destination Flat Sequencing System (DFSS) Facility Entry

7.1 Definition

Destination Flat Sequencing System Facility (DFSS) refers to the facilities listed in L006, Column C.

7.2 Eligibility

DFSS prices apply to pieces deposited at a USPS-designated FSS processing facility and correctly placed on a container labeled to a FSS scheme or a FSS facility processed by that facility or to a single 5-digit destination processed by that facility under labeling list L006. These pieces must include a full delivery address and meet the physical standards for FSS machinability in 705.14.0.

* * * * *

500 Additional Mailing Services

503 Extra and Additional Services

1.0 Basic Standards for All Extra Services

* * * * *

1.3 Paying Fees and Postage

[Revise the first sentence of 1.3 to read as follows:]

Except as provided under 604.6.1 and for official mail of federal government agencies collected under 703.7.0 (for Department of State, see 703.3.0), postage and extra service fees are paid at the time of mailing. * * *

1.4 Matter Eligible for Extra Services

1.4.1 Eligible Matter

One or more of the following extra or additional services may be added at the time of mailing, if the standards for the services are met and the applicable fees are paid, as follows:

Exhibit 1.4.1 Eligible Matter—Domestic Destinations

[Revise the entire Exhibit 1.4.1, Eligible Matter—Domestic Destinations, to read as follows:]

Extra service	Eligible mail class	Additional combined services
Registered Mail Registered Mail Restricted Delivery	Priority Mail First-Class Mail First-Class Package Service	Registered Mail COD Return Receipt Signature Confirmation

Extra service	Eligible mail class	Additional combined services
Certified Mail Certified Mail—Restricted Delivery Certified Mail—Adult Signature [1] Certified Mail—Adult Signature Restricted [1]	Priority Mail First-Class Mail First-Class Package Service	Return Receipt (Form 3811 only if with Adult Signature options [1])
Insurance Insurance Restricted Delivery (If insured >$500.00.) (Note: Priority Mail Express includes $100.00 of insurance and Priority Mail includes either $100.00 or $50.00 of insurance (see 503.4.0), insurance >$500.00 includes Signature Confirmation.)	Priority Mail Express Priority Mail Critical Mail First-Class Mail First-Class Package Service Standard Post Bound Printed Matter Library Mail Media Mail Parcel Select Parcel Select Lightweight (bulk insurance only) Standard Mail [7] (bulk insurance for (nonprofit) parcels only)	USPS Tracking Signature Confirmation (available if insured for <$500; included if insured for >$500.00.) Adult Signature Requested [1] Adult Restricted Delivery [1] Return Receipt (if insured >$500.00, Form 3811 only.) Special Handling—Fragile Parcel Airlift (PAL)
Certificate of Mailing (Form 3817 (retail use only) or Form 3665–Firm) for individual pieces only; Form 3665–Firm is for 3 or more pieces presented at one time (see 5.0)	Priority Mail First-Class Mail First-Class Package Service Standard Post Bound Printed Matter Library Mail Media Mail	Special Handling—Fragile Parcel Airlift (PAL)
Certificate of Bulk Mailing (Form 3606; only evidence of number of identical weight piece mailed (see 5.0).	Priority Mail First-Class Mail First-Class Package Service Standard Post Parcel Select Parcel Select Lightweight Standard Mail [7] Bound Printed Matter Library Mail Media Mail	Special Handling—Fragile Parcel Airlift (PAL)
Return Receipt (Form 3811 must bear an IMpb linked to the IMb for the host extra service for the appended mailpiece.)	Priority Mail Express (Form 3811 only). Priority Mail [3] First-Class Mail [3] First-Class Package Service [3] Standard Mail (parcels only) [2 3 7] Parcel Select [4] Parcel Select Lightweight [3] Standard Post [4] Bound Printed Matter [4] Library Mail [4] Media Mail [4]	USPS Tracking. Signature Confirmation Restricted Delivery Signature Confirmation [6] Special Handling Adult Signature Requested [1] (Form 3811 only) Adult Signature Restricted Delivery [1] (Form 3811 only) Parcel Airlift (PAL)
USPS Signature Services		
Signature Confirmation	Priority Mail Critical Mail First-Class Mail (parcels only; electronic option only) First-Class Package Service (electronic option only) Standard Post Parcel Select Parcel Select Lightweight Bound Printed Matter Library Mail Media Mail	Collect on Delivery (COD) Insurance Registered Mail Return Receipt [6] (Form 3811 only) Special Handling Hold For Pickup
Signature Confirmation Restricted Delivery	Priority Mail [3] First-Class Mail [2 3] First-Class Package Service Standard Post [5] Parcel Select [5] Parcel Select Lightweight [4] Bound Printed Matter [5] Library Mail [5]	Collect on Delivery (COD) Insurance Registered Mail Return Receipt [6] (Form 3811 only) Special Handling Hold For Pickup

Extra service	Eligible mail class	Additional combined services
	Media Mail [5]	
Adult Signature Required [1] Adult Signature Restricted Delivery [1]	Priority Mail Express Priority Mail Critical Mail First-Class Mail [2] First-Class Package Service [3] Parcel Select Parcel Select Lightweight Bound Printed Matter [2] Library Mail [2] Media Mail [2]	Insurance Return Receipt (Form 3811 only) Hold For Pickup
USPS Tracking (USPS Tracking is provided at no additional charge for all classes of mail (excludes Periodicals and Standard Mail parcels.)	Standard Mail (parcels only; electronic option only [1 2])	Insurance (bulk insurance (for Standard Mail (nonprofit) parcels) only [1 2])
Collect on Delivery (COD) COD Restricted Delivery	Priority Mail Express (1-Day and 2-Day only) Priority Mail First-Class Mail First-Class Package Service Signature Confirmation [2] (not available for purchase with Priority Mail Express COD) Standard Post Parcel Select Bound Printed Matter Library Mail Media Mail	Registered Mail Return Receipt Special Handling—Fragile Hold For Pickup
Return Receipt for Merchandise	Priority Mail Standard Mail (machinable and irregular parcels only) [7] Parcel Select Standard Post Bound Printed Matter Library Mail Media Mail	USPS Tracking Insurance [1] Special Handling Parcel Airlift (PAL) (see 703.2.0) 1. If insured for $200.00 or less
Special Handling		
Special Handling—Fragile	Priority Mail Express Priority Mail First-Class Mail First-Class Package Service Standard Post Parcel Select Bound Printed Matter Library Mail Media Mail	Collect On Delivery (COD) Insurance Signature Confirmation [2] Parcel Airlift (PAL)

[1] Not at retail.
[2] Parcels only.
[3] If purchased with Certified Mail, COD, insurance over $500.00 or Registered Mail.
[4] If purchased with bulk insurance over $500.00.
[5] If purchased with COD or insurance over $500.00.
[6] If purchased with insurance over $500.00, COD, Registered Mail, or Signature Confirmation Restricted Delivery.
[7] Excludes Marketing Parcels.

1.4.2 Offshore Domestic Destinations

[Revise the text of 1.4.2 to read as follows:]

As provided for the classes of mail under 1.4.1, and unless otherwise restricted (also see ''Overseas Military/Diplomatic Mail'' and ''Freely Associated States (FAS)'' sections of the Postal Bulletin), extra services are available for mail addressed to APO/FPO destinations (also see 703), and to ZIP Codes in U.S. territories and possessions (also see 608.2.0), or Freely Associated States (also see 608.2.0), as follows:

Exhibit 1.4.2 Eligible Matter—Offshore Domestic Destinations

[Revise Exhibit 1.4.2 to read as follows:]

Extra service	APO/FPO	U.S. territories and possessions	Freely associated states
Registered Mail	Limited [1] (Available only to select APO/FPO destinations.).	Yes	Yes.

Extra service	APO/FPO	U.S. territories and possessions	Freely associated states
Certified Mail	Yes	Yes	Yes.
Certified Mail Restricted Delivery	Yes	Yes	Yes.
Certified Mail Adult Signature Required	No	Yes	No.
Certified Mail Adult Signature Delivery	No	Yes	No.
Insurance (< or = $500.00)	Yes	Yes	Yes.
Insurance (>$500.00)	Limited [2]	Yes	Yes.
Insurance Restricted Delivery	Limited [2]	Yes	Yes.
Certificate of Mailing	Yes	Yes	Yes.
USPS Tracking	Limited [1]	Yes	Yes.
USPS Signature Service			
Signature Confirmation	No	Yes	No.
Signature Confirmation Restricted Delivery	No	Yes	No.
Adult Signature Requested	No	Yes	No.
Adult Signature Restricted Delivery	No	Yes	No.
COD	No	Yes	Limited.[3]
Return Receipt for Merchandise	Yes	Yes	Yes.
Special Handling			
Special Handling—Fragile	Yes	Yes	Yes.

[1] If insured for more than $500.00, signature service provided only if hardcopy return receipt (form 3811) is also purchased.
[2] Availability of electronic information regarding an event scan may be limited.
[3] Except for items sent to Marshall Islands and the Federated States of Micronesia.

1.4.3 Domestic Returns

Extra services for return mailpieces are available as follows:

Exhibit 1.4.3 Eligible Matter—Domestic Returns

[Revise Exhibit 1.4.3 to read as follows:]

Return service	Eligible extra services (paid by permit holder)	Eligible extra services (paid by permit holder or sender)
Merchandise Return Service	Registered Mail:	Registered Mail:
	Insurance < or = $500.00 [1 2]	Insurance < or = $500.00.[1 2]
	Insurance >$500.00 [1 2 4]	Insurance >$500.00.[1 2 4]
	Return Receipt for Merchandise	Return Receipt for Merchandise.
	Special Handling—Fragile	Special Handling—Fragile
		Certificate of Mailing.[3]
Priority Mail Return Service	Insurance < or = $500.00 [2]	Insurance < or = $500.00.[2]
First-Class Package Return Service.	Insurance >$500.00 [2 4]	Insurance >$500.00.[2 4]
Ground Return Service.		
Parcel Return Service	Insurance < or = $500.00 [2]	Insurance < or = $500.00.[2]
	Insurance >$500.00 [2 4]	Insurance >$500.00.[2 4]
		Certificate of Mailing.[3]

[1] Insurance may be combined with Special Handling.
[2] Insurance must be purchased; no included insurance is provided for returns.
[3] Individual pieces using Form 3817 or Form 3665 by sender only.
[4] Signature service is not provided for items insured for >$500.

* * * * *

1.7 Forms and Labels

* * * * *

1.7.2 Privately Printed Forms or Labels

[Revise the third sentence of 1.7.2 to read as follows:]

* * * Customers affixing both a barcoded address label and a barcoded extra service label on the same mailpiece must ensure that the barcodes on both labels match. * * *

* * * * *

1.7.4 Acceptance

Customers must also meet the following requirements when presenting mail bearing an extra service IMpb for acceptance:

[Revise the text of 1.7.4 item a to read as follows:]

a. Certificates of mailing using Form 3655–Firm or Form 3606–D when at least 50 pieces or 50 pounds (whichever amount is met first) of corresponding articles presented at one time, or for presorted or permit imprint mailings containing pieces with extra services, must be presented to a Post Office business mail entry unit (BMEU) or authorized detached mail unit (DMU).

* * * * *

1.8 Obtaining Delivery Information and Delivery Records

Delivery records for extra services are available as follows:

[Revise the text of 1.8 items a and c to read as follows:]

a. Information by article number can be retrieved at *www.usps.com* or by calling 1–800–222–1811. A proof of delivery letter (including recipient's

signature, when available) may be provided by email.

* * * * *

c. A return receipt (hardcopy Form 3811) may be purchased at the time of mailing and is received by mail.

* * * * *

1.10 Receipts

[Revise the text of the first and third sentence of 1.10, then, insert a new final sentence of 1.10 to read as follows:]

Except when using Certificate of Mailing Form 3655-Firm and Form 3606–D when presenting less than 50 pieces or 50 pounds (whichever amount is met first) of corresponding articles at one time, the mailer receives a USPS sales receipt and the postmarked (round-dated) extra service form for services purchased at retail channels. * * * For three or more pieces with extra or accountable services (includes international certificate of mailing) presented for mailing at one time, the mailer uses Form 3877 (firm sheet) or USPS-approved privately printed firm sheets in lieu of the receipt portion of the individual form. * * * Except for Registered Mail and COD items, the USPS keeps no mailing records for pieces bearing extra services.

[Delete current 1.11, USPS Mailing Records, in its entirety (text relocated to 1.10).]

2.0 Registered Mail

2.1 Basic Standards

2.1.1 Description

[Revise the introductory text of 2.1.1 to read as follows:]

Registered Mail is subject to the basic standards in 1.0; see 1.4 for eligible matter. Registered Mail is the most secure service that the USPS offers. It incorporates a system of receipts to monitor the movement of the mail from the point of acceptance to delivery. Registered Mail provides the sender with a mailing receipt and, upon request (see 1.8), electronic verification that an article was delivered or that a delivery attempt was made. Customers may obtain a record of delivery (which includes the recipient's signature) by purchasing a return receipt (6.0), at the time of mailing. Customers may direct delivery of Registered Mail only to the addressee (or addressee's authorized agent) using Registered Mail Restricted Delivery (2.1.4). Postal insurance is included in the fee for articles with a value of at least $0.01 up to a maximum insured value of $50,000.00. Postal insurance is not available for articles with no value ($0.00). The fees for articles valued over $50,000.00 include insurance up to $50,000.00, and increasingly higher fees for handling costs. The face (address side) of a registered article must be at least 5 inches long and 3½ inches high, regardless of thickness. Registration may not be obtained for the following item if:

* * * * *

[Revise the text of item c to read as follows:]

c. Prepared improperly or packed inadequately to withstand normal handling (see 2.3.4).

* * * * *

[Revise the text of item f. to read as follows:]

f. A class of mail not listed under eligible matter (see 1.4).

2.1.2 Label 200

[Revise the first sentence of 2.1.2 to read as follows:]

Registered Mail must bear the barcoded red Label 200 (see forms at *http://pe.usps.gov/*), or a non-barcoded red Label 200–N (when a mailer-generated shipping label bearing an IMpb (under 708.5.0) is also affixed on the same mailpiece). * * *

* * * * *

[Insert new items 2.1.4 and 2.1.5 to read as follows:]

2.1.4 Additional Standards for Registered Mail Restricted Delivery

Registered Mail Restricted Delivery permits a mailer to direct delivery only to the addressee (or addressee's authorized agent). The addressee must be an individual (natural person) specified by name. The mailer may request Registered Mail Restricted Delivery at the time of mailing by advising the USPS clerk or by marking the mail ''Restricted Delivery'' above the address and to the right of the return address, and paying the applicable fee. A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mail. Customers may obtain a record of delivery (which includes the recipient's signature) by purchasing a return receipt (6.0). If a return receipt is requested, the correct block on Form 3811 must be checked to show that restricted delivery is also required. Mail marked ''Restricted Delivery'' is delivered under the conditions in 508.1.1.7 and 1.1.8.

2.1.5 Registered COD Mail

Sealed domestic mail bearing First-Class Mail, First-Class Package Service, or Priority Mail postage may be sent as registered COD mail when meeting the standards in 9.0 and as follows:

a. Such mail is handled the same as other Registered Mail.

b. The maximum amount collectible from the recipient on one article is $1,000.00. Indemnity is available up to the registry limit of $50,000.00 by paying the registry fee for the value declared. The total fees charged for registered COD service include the proper registry fee for the value declared plus the registered COD fee. The mailer must declare the full value of the article being mailed, regardless of the amount to be collected from the recipient.

c. The registered label and the COD form must be affixed to each article. The registration number is used for delivery receipt and indemnity claims.

* * * * *

3.0 Certified Mail

3.1 Basic Standards

3.1.1 Description

[Revise the text of 3.1.1 to read as follows:]

Certified Mail is subject to the basic standards in 1.0; see 1.4 for eligible matter. Certified Mail provides the sender with a mailing receipt and, upon request, electronic verification that an article was delivered or that a delivery attempt was made. Customers can retrieve the delivery status as provided in 1.8. Certified Mail is dispatched and handled in transit as ordinary mail. Except for Priority Mail pieces with included insurance, no insurance coverage is provided when purchasing Certified Mail. USPS maintains a record of delivery (which includes the recipient's signature). Customers may obtain a delivery record by purchasing a return receipt (6.0) at the time of mailing. Customers may direct delivery of Certified Mail only to the addressee (or addressee's authorized agent) using Certified Mail Restricted Delivery (3.2.2); or to an adult using Certified Adult Signature Required or Certified Adult Signature Restricted Delivery when meeting the applicable standards for Adult Signature under 8.1.1e and 8.1.3.

3.2 Mailing

3.2.1 Form 3800

* * *A mailer of Certified Mail must:

* * * * *

[Revise the text of 3.2.1 item e to read as follows:]

e. For Certified Mail Restricted Delivery, meet the additional standards under 3.2.2).

[Insert new item 3.2.2 to read as follows:]

3.2.2 Additional Standards for Certified Mail Restricted Delivery

Certified Mail Restricted Delivery permits a mailer to direct delivery only

to the addressee (or addressee's authorized agent). The addressee must be an individual (natural person) specified by name. The mailer may request Certified Mail Restricted Delivery at the time of mailing by advising the USPS clerk or by marking the mail ''Restricted Delivery'' above the address and to the right of the return address and paying the applicable fee. A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mail. Customers may obtain a record of delivery (which includes the recipient's signature) by purchasing a return receipt (6.0). If a return receipt is requested, the correct block on Form 3811 must be checked to show that restricted delivery is also required. Mail marked ''Restricted Delivery'' is delivered under the conditions in 508.1.1.7 and 1.1.8.

4.0 Insured Mail

* * * * *

4.1.1 Additional Insurance—Priority Mail Express

[Revise the text of 4.1.1 to read as follows:]

Additional insurance, up to a maximum coverage of $5,000.00, may be purchased for merchandise valued at more than $100.00 sent by Priority Mail Express. The additional insurance fee is in addition to postage and other fees. See Notice 123—*Price List.* The insurance fee is entered in the block marked ''Insurance'' on the mailing label. If the label does not contain this block, the mailer uses the ''COD'' block by crossing out ''COD,'' writing ''INS'' to the right, and entering the fee for the coverage. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. When ''signature required'' service is not requested or when ''waiver of signature'' is requested, additional insurance is not available.

[Delete 4.1.2, Fees for Priority Mail Express Insurance, in its entirety (text relocated to 4.1.1).]

4.2 Insurance Coverage—Priority Mail

Priority Mail pieces bearing an Intelligent Mail package barcode (IMpb) or USPS retail tracking barcode (see 4.3.4) are insured against loss, damage, or missing contents, up to a maximum of $50.00 or $100.00, subject to the following:

* * * * *

[Delete 4.2 item e in its entirety, then, renumber current items f and g as new items e and f.]

* * * * *

4.3 Basic Standards

4.3.1 Description

[Revise the introductory text of 4.3.1 to read as follows:]

Insured mail is subject to the basic standards in 1.0; see 1.4 for eligible matter. The following additional standards apply to insured mail:

* * * * *

[Revise the text of 4.3.1 item c to read as follows:]

c. Insured mail provides the mailer with a mailing receipt. No record of insured mail is kept at the office of mailing; however, the USPS maintains insured mail delivery records for a period of time. An item insured for $500.00 or less receives a delivery scan. An item insured for more than $500.00 receives a delivery scan (includes returns products meeting the applicable standards in 505.0) and the USPS obtains and provides the recipient's signature as the delivery record to the mailer electronically (excludes returns products). Customers may optionally obtain a delivery record by purchasing a hardcopy return receipt (Form 3811; also see 6.0; excludes returns products). Customers may direct delivery of mail insured for more than $500.00 only to the addressee (or addressee's authorized agent) using Insurance Restricted Delivery (4.5);

* * * * *

4.3.2 Ineligible Matter

The following types of mail may not be insured:

* * * * *

[Delete 4.3.2 item e in its entirety (eligible matter provided under 1.4), then, renumber item f as new item e.]

f. Matter mailed at First-Class Mail prices (including Priority Mail) that consists of items described in 123.3.0,133.3.0, 233.2.0, and 283.2.0, and required to be mailed at First-Class Mail prices.

* * * * *

4.3.4 Markings and Forms

[Revise the introductory text of 4.3.4 to read as follows.]

The treatment of pieces is determined by the insurance amount as described in 4.3.1c and under the following conditions:

[Revise the text of 4.3.4 items a and b to read as follows:]

a. For retail pieces insured for $500.00 or less, the mailer must affix a barcoded Form 3813 (see forms at *http://pe.usps.gov/*) to each piece above the delivery address and to the right of the return address.

b. For retail pieces insured for more than $500.00, the mailer must affix a barcoded Form 3813–P (see forms at *http://pe.usps.gov/*) to each piece above the delivery address and to the right of the return address.

* * * * *

[Revise the second sentence of 4.3.4 item d to read as follows:]

d. * * * Mailing receipts are provided under 1.10.

* * * * *

[Revise the title of 4.4, Bulk Insurance for Standard Mail, to read as follows:]

4.4 Bulk Insurance for Standard Mail and Parcel Select Lightweight

4.4.1 Eligibility

[Revise the introductory text of 4.4.1 to read as follows:]

To mail at the bulk insurance prices, for Standard Mail (except Marketing Parcels) and Parcel Select Lightweight, mailers must obtain an authorization under 4.4.2 and meet the following criteria:

* * * * *

[Insert new 4.5 to read as follows:]

4.5 Additional Standards for Insurance Restricted Delivery

Insurance Restricted Delivery permits a mailer to direct delivery only to the addressee (or addressee's authorized agent). The addressee must be an individual (natural person) specified by name. The mailer may request Insurance Restricted Delivery at the time of mailing by advising the USPS clerk or by marking the mail ''Restricted Delivery'' above the address and to the right of the return address and paying the applicable fee. A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mail. Customers may obtain a record of delivery (which includes the recipient's signature) by purchasing a return receipt (6.0). If a return receipt is requested, the correct block on Form 3811 must be checked to show that restricted delivery is also required. Mail marked ''Restricted Delivery'' is delivered under the conditions in 508.1.1.7 and 1.1.8.

[Revise the title of 5.0 to read as follows:]

5.0 Certificates of Mailing

5.1 Basic Standards

5.1.1 Description—Individual Pieces

[Revise the text of 5.1.1 to read as follows:]

Certificates of mailing are subject to the basic standards in 1.0, see 1.4 for eligible matter. Certificates of mailing (Form 3817 and barcoded Form 3665-Firm, including USPS-approved facsimiles) are available only at the time

of mailing and provide evidence that individual mailpieces have been presented to the USPS for mailing. Certificates of mailing do not provide a record of delivery, and the Postal Service does not retain copies of either form. Form 3817 is available for less than three individual pieces, presented at one time at a retail Post Office, station or branch). Form 3665-Firm is available for three or more pieces, but fewer than 50 pieces or 50 pounds (whichever amount is met first), presented at one time at a retail post office, station or branch, or for three or more pieces, but at least 50 pieces or 50 pounds (whichever amount is met first), presented at a BMEU or USPS authorized DMU). Each individual Form 3817 or the Form 3665-Firm is postmarked (round-dated) at the time of mailing; the form(s) are then returned to the mailer and become the mailer's receipt. Mailers may use USPS-approved privately printed facsimiles of Form 3877 firm sheets as domestic certificates of mailing in lieu of the Form 3665.

[Delete 5.1.2, Eligible Matter—Single Piece, in its entirety (context of text already under 1.4 for eligible matter), then, renumber current 5.1.3 through 5.1.7 as new 5.1.2 through 5.1.6.]

5.1.2 Paying Fees

[Revise the first sentence of renumbered 5.1.2 to read as follows:]

For Certificate of Mailing, in addition to the correct postage, the applicable Certificate of Mailing fee must be paid for each article on Form 3817 or listed on Form 3665-Firm and for duplicate copies of either form. * * *

5.1.3 Mailer Preparation

[Revise the text of renumbered 5.1.3 to read as follows:]

A Certificate of Mailing must be completed by the mailer and all entries must be typed or printed in ink, by ballpoint pen, or computer-generated; the form or firm sheets become the mailer's receipts. Individual certificate and firm mailings must show the names and addresses of the sender and addressee and may show the amount of postage paid. The mailer may also place identifying invoice or order numbers on the certificate as a reference.

[Revise the title of renumbered 5.1.4 to read as follows:]

5.1.4 Firm Mailings—Three or More Pieces

When the number of articles presented justifies such action, the mailer must comply with these standards:

* * * * *

[Revise the text of 5.1.4 item b to read as follows:]

b. When the mailer describes and lists three or more individual pieces on Form 3665-Firm, but does not present the pieces in the order shown on the sheets, the mailer must consecutively number each entry line on the sheet and lightly number each piece to show both the corresponding sheet and line number.

5.1.5 Duplicate Copies—After Mailing

[Revise the first sentence of renumbered 5.1.5 to read as follows:]

To obtain a duplicate copy of the certificate after mailing (Form 3817 only), the mailer must present the original postmarked certificate and an additional certificate endorsed ''Duplicate'' or a copy showing the original dates of mailing. * * *

5.1.6 Presenting to Rural Carrier

[Revise the text of renumbered 5.1.6 to read as follows:]

For certificate of mailing (Form 3817 only), a mailer may provide mail to the rural carrier with the fee for the certificate. The carrier obtains the certificate at the Post Office, attaches the stamps, obtains the postmark (round-date) on the certificate on the day of mailing, and delivers the certificate to the mailer on the next trip.

5.2 Other Bulk Quantities—Certificate of Bulk Mailing

5.2.1 Description

[Revise the text of 5.2.1 to read as follows:]

Certificate of Bulk Mailing is subject to the basic standards in 1.0; see 1.4 for eligible matter. Form 3606–D, or USPS-approved facsimile, is available only at the time of mailing and is used to specify only the number of identical-weight pieces mailed; it does not provide evidence that a piece was mailed to a particular address. The Form 3606–D is postmarked (round-dated) at the time the mailing is presented and returned to the mailer as their receipt. Form 3606–D is available for identical-weight mailings of fewer than 50 pieces or 50 pounds (whichever amount is met first) presented at any retail Post Office, station or branch, or, for mailings of at least 50 pieces or 50 pounds (whichever amount is met first) presented at a BMEU or USPS authorized DMU. Certificate of Bulk Mailing service does not provide a record of delivery and the Postal Service does not retain any copies of Form 3606–D. The Form 3606–D cannot be used as a certificate of mailing of individual mailpieces or itemized lists. Mailers may use USPS-approved privately printed facsimiles of Form 3606 for domestic certificates of bulk mailings in lieu of the Form 3606–D.

5.2.2 Paying Fees

[Revise the text of 5.2.2 to read as follows:]

The applicable Certificate of Bulk mailing fee must be paid for mailings of identical-weight pieces reported on Form 3606–D, or for additional copies of the form if requested at the time of mailing, in addition to the correct postage. Mailers using Form 3606–D may affix ordinary stamps or postage evidencing indicia on the form to pay the fee. When postage evidencing indicia are used, they must bear the full numerical value of the fee in the imprint. Mailers using Form 3606–D with a permit imprint mailing also may pay certificate of mailing fees, at the time of mailing, using the same permit imprint.

6.0 Return Receipt

6.1 Basic Standards

6.1.1 Description

[Revise the text of 6.1.1 to read as follows:]

Return Receipt service is subject to the basic standards in 1.0; see 1.4 for eligible matter. A return receipt may be purchased at the time of mailing and provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery), and information about the recipient's actual delivery address. A mailer purchasing a return receipt may choose to receive the return receipt by mail (Form 3811) or electronically (by email, or by signature extract file format under 1.8). A complete return address is required on the mailpiece when a return receipt is requested. For Priority Mail Express (Form 3811 option only), the return address on the Priority Mail Express label meets this requirement. The unique barcode on a return receipt must be electronically linked to the separate barcode for the host extra service (for additional information, see the Intelligent Mail Package Barcode (IMpb) Implementation Guide available on RIBBS).

* * * * *

6.2 Obtaining Service

* * * * *

[Delete the heading 6.2.1, At Time of Mailing.]

[Delete items 6.2.2, After Mailing, and 6.2.3, Time Limit, in their entirety.]

6.3 Other Requests for Delivery Information

6.3.1 Receipt Not Received

[Delete the heading 6.3.1, Receipt Not Received, and revise the text of former 6.3.1 to read as follows:]

A mailer who did not receive a return receipt (Form 3811) for which the mailer had paid may request information from the delivery record within 90 days of the date of purchase using Form 3811–A. The mailer must complete Form 3811–A, at any Post Office, station or branch, and produce their receipt showing that the applicable return receipt fee was paid.

[Delete 6.3.2, Form 3811–A, in its entirety (text relocated to 6.3.1).]

[Delete sections 7.0, Restricted Delivery, through 9.0 Return Receipt for Merchandise, in their entirety, then, renumber current 10.0 through 15.0 as new 7.0 through 12.0.]

* * * * *

7.0 USPS Tracking

7.1 Basic Standards

7.1.1 Description

[Revise the text of renumbered 7.1.1 to read as follows:]

USPS Tracking is subject to the basic standards in 1.0; see 1.4 for eligible matter. USPS Tracking provides the mailer with information about the date and time an article was delivered or the date and time of the delivery attempt. See 1.8 to obtain delivery information. USPS Tracking is available only at the time of mailing. No record is kept at the office of mailing. USPS Tracking does not include insurance, but insurance may be purchased as an additional service unless otherwise restricted. Some statutes governing the mailing of legal documents may require the use of Certified Mail or Registered Mail, rather than USPS Tracking.

[Revise the title of and insert a new first and second sentence to renumbered 7.1.2 as follows:]

7.1.2 Electronic Option USPS Tracking for Standard Mail Parcels

Electronic option USPS Tracking may be purchased for Standard Mail parcels for mailers using privately printed forms or labels, or Label 400, and who establish an electronic link with the USPS to exchange acceptance and delivery data. Mailers wishing to obtain a mailing receipt may use Form 3877.

* * *

* * * * *

7.1.3 Additional Physical Standards

[Revise the introductory text of renumbered 7.1.3 to read as follows:]

In addition to the applicable standards in 101, 201.7.0, and 201.8.0, all parcels must be large enough to hold the required delivery address, return address, mailing labels, postage, barcode, endorsements, and other mail markings on the address side of the parcel. In addition to the applicable standards in 101 and 201 and for the purposes of USPS Tracking with Standard Post, Media Mail, Library Mail, Bound Printed Matter, or Parcel Select, the parcel must meet these additional requirements:

[Delete 7.1.3 item a in its entirety (context of text relocated to introductory text), then, renumber current items b and c as new a and b.]

* * * * *

[Delete renumbered 7.1.4, Service Options, in its entirety (appropriate text relocated to either 7.1.2 or 7.2.1 as only electronic option remains).]

7.2 Labels

7.2.1 Types of Labels

[Revise the text of renumbered 7.2.1 to read as follows:]

Mailers using privately printed USPS Tracking labels must meet the requirements in 1.8. Mailers not printing their own privately printed labels must use one of the label options as follows:

a. Label 400 may be used by: Electronic option mailers, USPS retail associates when affixed to mailpieces at a Post Office, station, or branch, or by mailers when affixed to mailpieces with postage and fees prepaid by metered indicia or ordinary stamps. A mailing receipt is provided to mailers who present mailpieces with an affixed Label 400 at a Post Office, branch, or station, or to their USPS carrier (except under 507.7.2.2). A mailer may also present mailpieces to a retail employee at a Post Office, station, or branch; and the retail associate will affix a USPS Tracking label to the item.

b. Unique, product specific USPS-provided tracking labels are for use by electronic option mailers. The labels are populated with the product service type code and customer's Mailer Identification (MID) number in the Intelligent Mail package barcode (IMpb).

* * * * *

[Revise the title of renumbered 8.0 to read as follows:]

8.0 USPS Signature Services

8.1 Basic Standards

8.1.1 Description

[Revise the entire text of renumbered 8.1.1 to read as follows:]

USPS Signature Services include Signature Confirmation, Signature Confirmation Restricted Delivery, Adult Signature Required, and Adult Signature Restricted Delivery, all of which are subject to the basic standards in 1.0; see 1.4 for eligible matter. Some statutes governing the mailing of legal documents may require the use of Certified Mail or Registered Mail rather than USPS Signature Services. USPS Signature Services are available as follows:

a. Signature Confirmation provides the mailer with information about the date and time an article was delivered or the date and time of the delivery attempt. A delivery record (including the recipient's signature) is maintained by the USPS and is available electronically or by email, upon request. The Signature Confirmation is available as a Retail option: Available at Post Offices at the time of mailing; a mailing receipt is provided. Electronic option: Available to mailers who establish an electronic link with the USPS to exchange acceptance and delivery data; no mailing receipt is provided.

b. Signature Confirmation Restricted Delivery provides the same service as provided under item a and permits a mailer to direct delivery only to the addressee (or addressee's authorized agent). The addressee must be an individual (natural person) specified by name. The mailer may request Insured Restricted Delivery at the time of mailing by advising the USPS clerk or by marking the mail ''Restricted Delivery'' above the address and to the right of the return address and paying the applicable fee. A firm mailer must enter the proper fee in the correct column of the firm sheet and place the required endorsement on the mailpiece.

c. Adult Signature service provides electronic confirmation of the delivery or attempted delivery of the mailpiece and signature of the recipient, who must be 21 years of age or older. Prior to delivery, the recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth. The USPS maintains a record of delivery (including the recipient's signature) for two years. The Adult Signature options are:

1. Adult Signature Required—provides delivery to a person who is 21 years of age or older. Upon delivery, an adult who is 21 years of age or older must provide one of the forms of identification listed above and provide a signature for receipt of the mailpiece.

2. Adult Signature Restricted Delivery—provides Adult Signature Required with the additional restriction of limiting delivery to a specific addressee or authorized agent who is 21

years of age or older. If the specific individual is not 21 years of age or older, the mailpiece will be returned to sender.

[Revise the title and text of renumbered 8.1.2 to read as follows:]

8.1.2 Additional Standards for Signature Confirmation

For Signature Confirmation with Standard Post, Media Mail, Library Mail, Bound Printed Matter, or Parcel Select pieces meeting the physical standards under 201.7, the parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any markings, endorsements, and extra service labels.

b. Except as provided in (12.1.2c.) for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under 201.7.0 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard box or similar container or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

d. Mailers must use one of the following labels:

1. Form 153 (see forms at *http://pe.usps.gov/*), obtained from the Post Office at no charge, may be used only with the retail option.

2. Label 315 electronic Signature Confirmation is available to electronic option mailers.

3. Privately printed barcoded labels must meet the requirements in 1.8. On the Priority Mail label, mailers must use the registered trademark symbol following the Priority Mail text or add the following statement at the bottom of the label in at least 6-point Helvetica type: ''Priority Mail is a registered trademark of the U.S. Postal Service.'' See *Parcel Labeling Guide* or Publication 97 available on RIBBS.

e. The barcoded label section of Label 315 or Form 153 (see forms at *http://pe.usps.gov/*) must be placed completely on the address side either above the delivery address and to the right of the return address, or to the left of the delivery address. A privately printed Signature Confirmation label that is separate from a privately printed address label must be placed in close proximity to the address label.

[Delete renumbered 8.1.3, Service Options, in its entirety (context of text relocated to 8.1.2), then insert new 8.1.3 as follows:]

8.1.3 Additional Standards for Adult Signature Service

Customers may obtain Adult Signature Required and Adult Signature Restricted Delivery by producing qualified shipping labels with Intelligent Mail package barcodes. The Adult Signature Required or Adult Signature Restricted Delivery fee must be paid in addition to the correct postage using Click-N-Ship, PC Postage, Permit imprint (if the customer electronically submits postage statements and mailing documentation) or IBI postage meter. Conditions in 8.3.1 and 8.3.2 also apply to Adult Signature Restricted Delivery items. A shipment of cigarettes and smokeless tobacco with Adult Signature service, mailed by certain individuals under 601.9.0, requires the mailer to present items at a retail counter.

[Delete renumbered 8.2, Labels, in its entirety (context of text relocated to 8.1.2).]

9.0 Collect on Delivery (COD)

9.1 Basic Standards

9.1.1 Description

[Revise the text of renumbered 9.1.1 to read as follows:]

Collect on delivery (COD) is subject to the basic standards in 1.0; see 1.4 for eligible matter. Any mailer may use COD to mail an article (using a unique COD number for each article) for which the mailer has not been paid and have its price and the cost of the postage collected (not to exceed $1,000.00) from the addressee (or agent). COD service provides the mailer with a mailing receipt and the USPS maintains a record of delivery (including the recipient's signature). The recipient has the option to pay the COD charges (with one form of payment) by cash, or a personal check or money order made payable to the mailer (accepted by the USPS employee upon the recipient's presentation of adequate identification). The USPS forwards the check or money order to the mailer. If payment is made by cash, a money order fee is included in the amount collected from the recipient (unless the mailer is authorized to participate in EFT for the remittance), in addition to the COD amount. The Postal Service cannot intervene in disputes between mailers and recipients of COD mail after payment was returned to the mailer. Customers may obtain a delivery record by purchasing a return receipt. Bulk proof of delivery service (7.0) is also available if electronic return receipt service is purchased at the time of mailing.

* * * * *

9.1.3 Registered COD Mail

[Revise the text of renumbered 9.1.3 to read as follows (text relocated under 2.1.5, Registered COD):]

Sealed domestic mail bearing First-Class Mail, First-Class Package Service, or Priority Mail postage may be sent as registered COD mail as provided under 9.0 and 2.1.5.

* * * * *

10.0 Special Handling

10.1 Basic Standards

10.1.1 Description

[Revise the first and last sentences of renumbered 10.1.1 to read as follows:]

Special Handling is subject to the basic standards in 1.0; see 1.4 for eligible matter.* * * There are unique service codes included in the IMpb for the content categories (Fragile, Hazardous Material Transportation, Live Animal Transportation, Perishables, and Cremated Remains (only available with Priority Mail Express) of special handling.

10.1.2 Bees and Poultry

[Revise the text of renumbered 10.1.2 to read as follows:]

Unless sent Priority Mail Express, Priority Mail, First-Class Mail or First-Class Package Service, special handling-fragile is required for parcels containing honeybees or baby poultry.

10.1.3 Marking

[Revise the text of renumbered 10.1.3 to read as follows:]

Except for cremated remains (accordingly marked or with Label 139 affixed), the marking ''Special Handling-Fragile'' must appear prominently above the address and to the right of the return address on each piece for which the special handling service is requested and the applicable fee has been paid.

[Delete renumbered item 10.1.4, Parcel Select—Nonmachinable Parcels, in its entirety (the Parcel Select nonmachinable surcharge was eliminated in a prior price change).]

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

1.1 Business Reply Mail (BRM) Prices and Fees

[Revise the title and text of 1.1.1 to read as follows:]

1.1.1 General BRM Charges

For BRM cards, letters and flats, an annual permit fee under 1.2 is required, and a per-piece fee under 1.1.8 is applied to each mailpiece, in addition to the applicable First-Class Mail or Priority Mail postage. See Notice 123—*Price List,* for applicable prices and fees.

[Revise the title and text of 1.1.2 (context of deleted text relocated to 1.1.1) to read as follows:]

1.1.2 High-Volume Basic BRM

An annual account maintenance fee is required for high-volume BRM.

[Revise the text of 1.1.3 (context of deleted text relocated to 1.1.1) to read as follows:]

1.1.3 Basic Qualified BRM (QBRM)

In addition to prices and fees under 1.1.1, an annual account maintenance fee is required for basic QBRM (which applies to a card meeting the applicable standards in 1.6 and 201.1 or a letter meeting the applicable standards in 1.6 that is not eligible for and claimed at the QBRM price for cards).

[Revise the text of 1.1.4 (context of deleted text relocated to 1.1.2) to read as follows:]

1.1.4 High-Volume Qualified BRM

In additional to 1.1.1, annual permit and account maintenance fees, and a quarterly fee, are required for high-volume QBRM.

[Revise the text of 1.1.5 (context of deleted text relocated to 1.1.1) to read as follows:]

1.1.5 Bulk Weight Averaged Nonletter-Size BRM

In addition to 1.1.1, permit holders participating in bulk weight averaged nonletter-size BRM under 1.8 must pay an annual account maintenance fee, and a monthly maintenance fee.

* * * * *

[Insert new 1.1.7 through 1.1.11 as follows (these relocated sections all have to do with prices and fees):]

1.1.7 Postage

Each piece of returned BRM is charged the applicable single-piece First-Class Mail or Priority Mail postage (423.1.0, and 133.1.0). Cards must meet the standards in 201.1.0 to qualify for card price postage. Any card larger than those dimensions is charged the applicable First-Class Mail letter price. For Priority Mail or First-Class Mail BRM pieces exceeding 13 ounces in weigh, if the zone cannot be determined from a return address or cancellation, then the permit holder is charged zone 4 postage based on the weight of the piece. For QBRM, see 1.6.3.

1.1.8 Per Piece Fees

Per piece fees listed in 1.1 are charged for each piece of returned BRM postcard, letter or flat (in addition to postage in 1.1.1). If a permit holder has not paid an annual account maintenance fee and established a BRM advance deposit account, then the basic (higher) BRM per piece fee must be paid. If a permit holder has paid the annual account maintenance fee and has established a BRM advance deposit account, then the high-volume (lower) BRM per piece fee is paid. For QBRM, see 1.6.4.

1.1.9 Advance Deposit Account and Annual Account Maintenance Fee

A permit holder may choose to pay an annual account maintenance fee and establish an advance deposit account, which qualifies returned BRM pieces for the high-volume per piece fee. The account maintenance fee must be paid once each 12-month period at each Post Office where a permit holder holds an advance deposit account. Payment of the account maintenance fee is based on the anniversary date of the initial payment. The fee may be paid in advance only for the next 12-month period and only during the last 60 days of the current 12-month period. The fee charged is that which is in effect on the date of payment. A separate advance deposit account solely for BRM is not required. An advance deposit account can be used for BRM under these conditions:

a. For each withdrawal, only one statement is provided for each annual account maintenance fee paid.

b. If a permit holder distributes BRM with different addresses (including Post Office box numbers) under the same permit number going to the same delivery unit and has only one business reply account, then the BRM is separated by each different address but only one statement is provided and only one annual account maintenance fee is paid.

c. The permit holder must pay an annual account maintenance fee for each separate statement (accounting) requested. If only one annual account maintenance fee is paid, then the permit holder receives only one statement.

d. The permit holder must maintain a sufficient balance in the BRM advance deposit account to cover postage and per piece fees for returned mailpieces. The permit holder is notified if funds are insufficient. After three calendar days, if no funds are deposited, then the BRM on hand is charged the basic BRM per piece fee and postage and charges are collected from the permit holder (*e.g.,* in cash) prior to delivery.

e. BRM addressed to several different firms at the same delivery unit may be delivered to an agent authorized by a valid BRM permit holder. The agent pays one annual account maintenance fee for all the firms represented by the agent in the same delivery unit. If the agent, or any of the firms represented by the agent, wants a separation of charges, then separate (additional) account maintenance fees must be paid.

1.1.10 Renewal of Annual Account Maintenance Fee

An annual renewal notice is provided to each BRM permit holder with a BRM advance deposit account. The notice and the payment for the next 12 months must be returned by the expiration date to the Post Office that holds the advance deposit account. After the expiration date, if the permit holder has not paid the annual account maintenance fee but still has a valid BRM permit, returned BRM pieces no longer qualify for the high-volume BRM per piece fee and are charged the basic BRM per piece fee in 1.1.8.

1.1.11 Payment Options

Permit holders may pay for postage and per piece fees on returned pieces by cash or check upon delivery, through a regular postage due account (604.6.3), or through a BRM advance deposit account (1.1.9). A regular postage due account is not charged an annual account maintenance fee and does not qualify the permit holder for high-volume BRM per piece fees.

[Delete 1.2 Qualified Business Reply Mail (QBRM) Prices, and 1.3, Qualified Business Reply Mail (QBRM), in their entirety, (1.2 is already stated in 505.1.1 and 1.3 relocated to 1.10, Additional Standards for QBRM.), then, insert new 1.2, Permits, (relocated from current 1.5) to read as follows:]

1.2 Permits

* * * * *

1.2.2 Application Process

The mailer may apply for a BRM permit by submitting a completed Form 3615 to the Post Office issuing the permit and paying the annual permit fee. If a completed Form 3615 is already on file for the mailer for other permits at that office, then the mailer must submit the annual BRM permit fee and the USPS amends Form 3615 by adding the BRM authorization.

1.2.3 Annual Permit Fee

A permit fee must be paid once each 12-month period at each Post Office where a BRM permit is held. Payment of the permit fee is based on the

anniversary date of the permit's issuance. The fee may be paid in advance only for the next 12 months and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment. Agents authorized by a permit holder under 1.7 are not required to pay an annual permit fee at the Post Office where their BRM is received.

1.2.4 Renewal of Annual Permit Fee

An annual renewal notice is provided to each BRM permit holder by the USPS. The notice and the payment for the next 12 months must be returned by the expiration date to the Post Office that issued the permit. After the expiration date, if the permit holder has not paid the annual permit fee, then returned BRM pieces are treated as follows:

a. Postcards of no obvious value are treated as waste and disposed of at the delivery unit.

b. Letter and flat pieces with a return address are endorsed ''Business Reply Permit Canceled'' and are returned to the sender.

c. Pieces without a return address are endorsed ''Business Reply Permit Canceled'' and forwarded to the mail recovery center for handling.

1.2.5 Other Post Offices

A permit holder may distribute BRM through any Post Office for delivery at any Post Office under 1.7.

1.2.6 Revocation of a Permit

The USPS may revoke a BRM permit because of format errors or for refusal to pay permit fees (annual, accounting, quarterly, or monthly), postage, or per piece fees. If the permit was revoked due to format errors, then a former permit holder may obtain a new permit and permit number by completing and submitting a new Form 3615, paying the required BRM annual permit fee, paying a new annual account maintenance fee (if applicable), and, for the next 2 years, submitting two samples of each BRM format to the appropriate Post Office for approval.

[Renumber current 1.4 through 1.12 as new 1.3 through 1.8.]

[Revise the title (to align with other titles in 505) of renumbered 1.3 as follows:]

1.3 Basic Standards

1.3.1 Description

[Revise the text of renumbered 1.3.1 to read as follows:]

Business Reply Mail (BRM) service enables a permit holder to receive First-Class Mail and Priority Mail back from customers. The permit holder guarantees payment of the applicable First-Class Mail or Priority Mail postage, plus a per piece fee, on all returned BRM which includes any incomplete, blank, or empty BRM cards and envelopes and any mailable matter with a BRM label affixed. BRM cards, envelopes, self-mailers, and flats may be distributed by a BRM permit holder in any quantity for return to any Post Office in the United States and its territories and possessions, including military Post Offices overseas. High-Volume BRM under 1.1.2 is a subset of BRM that qualify pieces for a reduced per piece fee. QBRM, under 1.1.3, 1.1.4 and 1.6, is a subset of BRM available for specific automation-compatible letter-size pieces that qualify for an automation postage price and a reduced per piece fee. Domestic BRM may not be distributed to foreign countries (see the International Mail Manual for International Business Reply Service (IBRS)). BRM may not be used for any purpose other than that intended by the permit holder, even when postage is affixed. In cases where a BRM card or letter is used improperly as a label, the USPS treats the item as waste.

[Delete renumbered 1.3.2, Payment Guarantee, in its entirety, (text relocated under 1.3.1, Description), then, renumber recently renumbered 1.3.3, Services, through 1.3.8, Error Notification, as new 1.3.2 through 1.3.7.]

[Revise the title and text of newly renumbered 1.3.2 as follows:]

1.3.2 Extra Services

No extra services are permitted with BRM, except for BRM parcels bearing an Intelligent Mail package barcode with imbedded USPS Tracking service.

[Delete renumbered 1.3.3, Address, in its entirety, (text relocated more appropriately under 1.8.6, Format Elements), then, renumber recently renumbered 1.3.4, through 1.3.7 as new 1.3.3 through 1.3.6.]

[Delete recently renumbered 1.3.4, Intentions of the Permit Holder, in its entirety, (text relocated in 1.3.1, Description) and renumber recently renumbered 1.3.5 through 1.3.6 as new 1.3.4 through 1.3.5.]

1.3.4 Samples

[Revise the text of newly renumbered 1.3.4 to read as follows:]

Prior to printing, permit holders are encouraged, but not required, to submit preproduction samples of BRM to the USPS for approval. QBRM pieces require USPS approval (1.6).

1.3.5 Error Notification

[Revise the text of newly renumbered 1.3.5 to read as follows:]

If the USPS discovers a BRM format error, the responsible permit holder or authorized agent receives written notification of the error. The permit holder must correct the error and make sure that all future BRM pieces meet appropriate specifications. The repeated distribution of BRM with format errors is grounds for revoking a BRM permit (1.2.6).

[Delete renumbered 1.4, Permits, in its entirety (relocated to new 1.2.]

[Delete renumbered 1.5, Postage, Per Piece Fees, and Account Maintenance Fees, and 1.5.1, Postage through 1.5.4, Renewal of Annual Account Maintenance Fee, (all text relocated within 1.1) in their entirety.]

[Renumber 1.5.5 through 1.5.7 as new 1.3.6 through 1.3.8.]

1.3.6 Combined Pieces as a Single Item

Two or more BRM pieces may be mailed as a single piece if the BRM pieces are identically addressed and prepared for mailing in accordance with 201.1.0. The permit holder is charged postage based on the total weight of the combined piece plus one per piece fee. If the combined pieces become separated, then the permit holder must pay postage and a per piece fee for each individual piece. Combined pieces are not eligible for QBRM postage prices or per piece fees.

1.3.7 With Postage Affixed

[Revise the text of renumbered 1.3.7 to read as follows:]

BRM with postage affixed is handled the same as other BRM. No effort is made to identify or separate BRM pieces with postage affixed. The amount of affixed postage is not deducted from the postage or per piece fees owed. The permit holder may request a credit or refund for postage affixed to BRM under 604.9.2.

[Delete newly renumbered 1.3.8 in its entirety (context of text relocated to 1.1.11 under BRM Prices and Fees).]

1.4 Mailpiece Characteristics

* * * * *

1.4.5 Window Envelopes

The following standards apply to BRM prepared in an open-panel or a covered window envelope:

* * * * *

c. Open panel window envelopes:

* * * * *

[Revise the text of renumbered 1.4.5c.2 to read as follows:]

2. Other required and optional elements in 1.5 may be printed on the insert appearing through the address window.

1.4.6 Self-Mailers and Reusable Mailpieces

[Revise the first sentence of renumbered 1.4.6 to read as follows:]

In addition to the standards in 1.4 and 1.5, self-mailers and reusable mailpieces must meet the standards in 201.3.14 and 601.6.5 (or 601.6.6). * * *

* * * * *

[Revise the title and text of renumbered 1.4.8 to read as follows:]

1.4.8 Labels for Letter-Size Pieces

The minimum size of a BRM label for use on letter-size pieces is 2 inches high and 3 inches long. BRM labels on ordinary letter-size pieces are not required to have a FIM or a ZIP+4 barcode, but all other format standards in 1.5 must be met. In cases where a BRM card or letter is used improperly as a label, the USPS treats the item as waste. The following standards apply to BRM labels for use on letter-size pieces:

a. The minimum size of a BRM label is 2⅝ inches high and 4¼ inches long. All format elements, including a FIM, must be printed on the label. *Exception:* The vertical series of horizontal bars must be at least ¾ inch high. Horizontal bars may be omitted on BRM letter-size pieces bearing Intelligent Mail barcodes. The back of the label must be coated with a permanent adhesive strong enough to firmly attach the label to an envelope.

b. The permit holder must provide instructions to the user describing how the label should be applied to a mailpiece and what precautions must be observed when applying the label (see Exhibit 1.4.8a). A pictorial diagram showing proper placement of the label must be included with the instructions. At a minimum, the instructions must include the following directions:

1. Place the label squarely in the upper right corner of the envelope.

2. Do not write on the envelope or label.

3. Do not use a window envelope, an envelope that is less than 1 inch higher than the label an envelope that is more than 4½ inches high, or an envelope with any printing other than a return address.

4. Do not use tape to affix the label.

c. When the label is affixed to an envelope, the address must be placed within the OCR read area (see 202.2.1).

d. Pieces with business reply labels cannot qualify for QBRM prices.

Exhibit 1.4.8a Instructions for Affixing Business Reply Label

* * * * *

[Delete 1.4.9, Labels for Letter-Size Pieces, in its entirety (context of text relocated to 1.4.8).]

1.5 Format Elements

1.5.1 General

[Revise the text of renumbered 1.5.1 to read as follows:]

Except for BRM parcels under 3.0, all pieces of BRM are subject to these format elements. The USPS may revoke a BRM permit because of format errors under 1.2.6. An Intelligent Mail barcode (IMb) is not required, except for QBRM prices; if an IMb is used, it must be printed and placed under 1.5.10 and as shown in Exhibit 1.5.1a. Pieces of QBRM and bulk weight averaged nonletter-size BRM are subject to additional format standards listed in 1.6 and 1.8. BRM format elements are shown in Exhibit 1.5.1a.

Exhibit 1.5.1a Business Reply Mail Format

* * * * *

1.5.2 Printing and Print Reflectance

[Revise the second sentence of renumbered 1.5.2 to read as follows:]

* * * Handwriting, typewriting, and hand stamping may not be used to prepare BRM. Printed borders are not permitted on letter-size BRM, but are permitted on envelopes greater than 6⅛ inches high or 11½ inches long or ¼ inch thick. * * *

* * * * *

1.5.4 Business Reply Legend

[Revise the first sentence of 1.5.4 to read as follows:]

The legend ''BUSINESS REPLY MAIL'' or ''BUSINESS REPLY LABEL'', as appropriate, must appear on all pieces. * * *

* * * * *

1.5.6 Delivery Address

[Add a new first sentence to and revise item d of renumbered 1.5.6 to read as follows:]

The delivery address on a piece of BRM may not be altered to redirect the mailpiece to any address other than the one preprinted on the piece. * * *

* * * * *

[Renumber current 1.9 as new 1.5.10, then, revise the title and text of renumbered 1.5.10 to read as follows:]

1.5.10 Additional Standards for Letter-Size and Flat-Size BRM Bearing an IMb

When an Intelligent Mail barcode is printed on any BRM pieces, it must contain the barcode ID, service type ID, and correct ZIP+4 routing code, as specified under 708.4.3. The IMb must be placed on the address side of the piece and positioned as part of the delivery address block under 202.5.7 or within the barcode clear zone in the lower right corner of the piece if printed directly on the piece.

1.6 Additional Standards for Qualified Business Reply Mail (QBRM)

1.6.1 Description

[Revise renumbered 1.6.1 to read as follows:]

Qualified business reply mail (QBRM) is a subset of business reply mail. Permit holders distribute automation-compatible letter-size pieces that qualify for automation postage prices and reduced per piece fees. In addition to meeting the eligibility requirements below, the authorization to participate in QBRM under 1.6.2, and the format standards in 1.5, QBRM is First-Class Mail that:

a. Is letter-size and is prepared to meet the automation compatibility requirements in 201.3.0 (except 201.3.13.1).

b. Meets all the Business Reply Mail (BRM) standards in 1.3 through 1.8.

c. Has postage and per piece charges deducted from a BRM advance deposit account.

d. Is authorized to mail at QBRM prices and fees under 1.6.2. During the authorization process, a proper ZIP+4 Code is assigned to the mailer (under 1.6.2) for each price category of QBRM to be returned under the system (one for card priced pieces, one for letter-size pieces weighing 1 ounce or less, and one for letter-size pieces weighing over 1 ounce up to and including 2 ounces).

e. Bears the proper ZIP+4 Code, assigned by USPS for the appropriate price category, in the address of each piece. The ZIP+4 Codes assigned for this program must be used only on the organization's appropriate QBRM pieces.

f. Bears the correct Intelligent Mail barcode, correctly prepared under 1.9 and 708.4.0, that corresponds to the unique ZIP+4 code in the address on each piece distributed.

g. Bears a properly prepared facing identification mark (FIM) C on each piece distributed (see 708.9.0).

[Delete renumbered 1.6.2, Eligibility, in its entirety (text in ''1.3'' as reference in 1.10.2 relocated to 1.10.1 (1.10.1

subsequently renumbered as new 1.6.1)), then, renumber recently renumbered 1.6.3 through 1.6.8 as new 1.6.2 through 1.6.7.]

1.6.2 Authorization

[Revise the text of renumbered 1.6.2 to read as follows:]

To participate in QBRM, a mailer with a valid BRM permit and having paid the annual account maintenance fee, must submit Form 6805 to the Postmaster or manager, Business Mail Entry for the Post Office to which the QBRM pieces are to be returned. USPS assigns to the mailer a proper BRM ZIP+4 Code, as applicable, reviews Form 6805 and preproduction samples provided by the mailer for compliance with relevant standards, and if approved, issues the mailer an authorization via the Form 6805.

* * * * *

1.6.4 Per Piece Fees

[Revise the text of renumbered 1.6.4 to read as follows:]

Per piece fees are charged for each piece of returned QBRM (in addition to postage in 1.6.3). Pieces that do not meet the format requirements for QBRM cannot qualify for QBRM per piece fees and are charged the high-volume BRM per piece fees in 1.1.2.

1.6.5 Annual Account Maintenance Fee and Advance Deposit Account

[Revise the text of renumbered 1.6.5 to read as follows:]

Permit holders are required to pay QBRM postage and per piece fees through a BRM advance deposit account, which requires payment of an annual account maintenance fee (see 1.1.9).

* * * * *

[Revise the complete text of renumbered 1.7 to read as follows (incorporating the text and sections 1.11.2 through 1.11.6 as new 1.7.1 items a through e.):]

1.7 BRM Distributed and Received by Agents of a Permit Holder

1.7.1 Description

Permit holders may give permission to subsidiary offices, agents, or authorized representatives to distribute and receive BRM using a single (corporate) permit number. BRM pieces are distributed by and returned to agents, who pay postage and per piece fees on those returned pieces. Agents may use any type of BRM service meeting the applicable standards in 1.0 and under the following additional conditions:

a. Permit—The main permit holder or ''corporate'' office applies for the permit number and pays the permit fee. The agent must present a letter of authorization from the permit holder showing the name, address, and telephone number of the local agent authorized to receive the BRM to the Post Office where the BRM is to be returned. Any time there is a change to the original permit application or the authorization letter, each agent must provide an amended letter of authorization to their local Post Office.

b. Annual Permit Fee—Agents do not pay a separate annual permit fee but must submit evidence (usually a copy of Form 3544) to the local office once each 12-month period to show that the annual permit fee has been paid. This evidence is not required if-the permit holder has a centralized account processing system (CAPS) account, through which the local Post Office can determine that the permit fee has been paid.

c. Postage, Per Piece Fees, and Annual Account Maintenance Fees—Agents receiving BRM or QBRM are responsible for paying all the postage and per piece fees, and applicable annual account maintenance fees, under 1.1 for the type of service received.

d. Payment Guarantee—The permit holder is ultimately responsible for postage and per piece fees for all pieces returned under that permit number. If a local agent refuses or neglects to pay postage or per piece fees on returned pieces, then those pieces are forwarded to the Post Office that issued the original permit for collection of postage and per piece fees from the permit holder. Once forwarded to the permit holder, these pieces cannot qualify for QBRM postage and per piece fees. The permit holder's refusal to accept and pay the required postage and per piece fees for BRM offered for delivery is grounds for immediate revocation of the BRM permit (1.5.6).

e. Format—BRM distributed by agents must meet all required format standards in 1.4 and 1.5. Authorized representatives distributing BRM on behalf of a permit holder must have the permit holder's name and permit number printed on the BRM and their own names and addresses printed below the permit holder's name, except:

1. When the agent is a branch of an authorized business.

2. The permit holder notifies a Post Office that authorized representatives may use the permit holder's permit number without printing the permit holder's name.

1.8 Bulk Weight Averaged Nonletter-size BRM

* * * * *

1.8.3 Postage, Per Piece Fees, and Other Fees

[Revise the last sentence of renumbered 1.8.3 to read as follows:]

* * * Permit holders participating in bulk weight averaged nonletter-size BRM must pay an annual account maintenance fee and a monthly maintenance fee (see 1.1.5).

[Revise the title of 1.8.4, Application Procedures, to read as follows:]

1.8.4 Application Process

[Revise the introductory text of renumbered 1.8.4 to read as follows:]

A permit holder who wants to use bulk weight averaged BRM for nonletter-size pieces must submit a written request to the Postmaster of the office where the BRM permit is held. The Postmaster forwards this information to the manager, Customer Service Standardization, USPS Headquarters (see 608.8.0 for address). The request must include the following information:

* * * * *

[Revise the text of 1.8.4d read as follows:]

d. Based on the estimated volume in 1.8.4c, a 24-hour estimate and a 30-day estimate of postage and per piece fees using the postage and charges listed in 1.1.5.

* * * * *

1.8.7 Revoking Authorization

[Revise the introductory text of renumbered 1.8.7 to read as follows:]

A Postmaster may terminate authorization for bulk weight averaged BRM by sending written notice to the permit holder, for any of the following reasons:

* * * * *

[Revise the heading of 2.0, Permit Reply Mail, to read as follows:]

2.0 Permit, Pre-Paid (Metered), and Courtesy Reply Mail

[Revise the title of 2.1, General Information, to read as follows;]

2.1 Permit Reply Mail

2.1.1 Description

[Revise the second sentence of 2.1.1 to read as follows:]

* * * Mailers must distribute PRM pieces as part of the contents of an outgoing First-Class Mail mailing (see 230) only by using a valid permit imprint (604.5.0) account.

[Revise the title of 2.1.2, Services, as follows;]

2.1.2 Extra Services

* * * * *

[Delete 2.1.3, Address, in its entirety (text relocated to 2.3.6), then renumber

current 2.1.4 through 2.1.5 as new 2.1.3 through 2.1.4.]

* * * * *

2.3.6 Delivery Address

[Revise the text of 2.3.6 to read as follows:]

The complete address (including the permit holder's name, delivery address, city, state, and ZIP+4 Code) must be printed on the piece. The delivery address on a PRM mailpiece may not be altered to redirect it to any address other than the one preprinted on the piece. PRM pieces must bear an Intelligent Mail barcode meeting the standards in 202.5.0 and 708.4.0.

* * * * *

2.3.8 Company Logo

[Revise the text of 2.3.8 to read as follows:]

A company logo is permitted on letter-size PRM, provided the logo is placed no lower than 5/8 inch from the bottom edge of the piece and it does not interfere with any required format element.

[Delete 2.4, Permit Imprint Account, in its entirety (relocated the last sentence to 2.1.1, Description, and the rest of this text is already stated in 2.1.1), then, renumber current 2.5 and 2.6 as new 2.4 and 2.5.]

* * * * *

[Renumber recently renumbered 2.5, Courtesy Reply Mail, as new 2.7.]

[Insert new section 2.6 (relocated more appropriately here from 604.4.5.2) to read as follows:]

2.6 Prepaid (Metered) Reply Mail

2.6.1 Description

Mailers may use indicia generated by any postage evidencing system (see 604.4) to prepay reply postage on Priority Mail Express, on Priority Mail when the price is the same for all zones, on First-Class Mail, and on single-piece price Media Mail and Library Mail under the following conditions.

a. The postage amount must be sufficient to prepay the full postage due.

b. Print indicia directly on the mailpiece or on a label, and place indicia under 201.4.3.3.

c. Indicia used to prepay reply postage must not show the date.

d. Pre-address the mailpiece for return to the authorized user only.

e. Print the words ''NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY'' directly above the address.

f. Mailers may use FIM A on barcoded letter-size First-Class Mail reply mail except when using PC Postage.

g. When using PC Postage, mailers must use FIM D for prepaid reply mail when the indicium is printed directly on the mailpiece.

h. The address side must appear as described in this section and shown in the illustration below. Nothing may be added except a return address, FIM, or barcode.

* * * * *

[Insert new 2.8 (context of text relocated from 201.3.18) to read as follows:]

2.8 Enclosed Reply Cards and Envelopes

Mailers may enclose reply cards or envelopes (*i.e.* BRM under 1.0; Permit Reply Mail under 2.1 and 2.4, Prepaid (Metered) Reply under 2.6, or Courtesy Reply Mail under 2.7), addressed for return to a domestic delivery address, within automation mailings subject to provisions in 201.3.0 for enclosures.

[Revise the title of 3.0 to read as follows:]

3.0 Merchandise Return Service (MRS)

3.1 Prices and Fees

3.1.1 Permit Fee

[Revise the text of 3.1.1 to read as follows:]

An annual Returns Services permit fee must be paid once each 12-month period at each Post Office where a Merchandise Return Service (MRS) permit is held. The fee (in effect on the date of the payment) may be paid for the next 12 months, during the last 60 days of the service period, before the anniversary of the permit's issuance. An approved merchandise return permit on Form 3615 must be on file at every Post Office to which parcels are returned.

3.1.2 Advance Deposit Account and Account Maintenance Fee

[Revise the entire text of 3.1.2 (including relocated text from 3.2.9, Multiple Accounts) to read as follows:]

There is an annual Returns Services account maintenance fee for the advance deposit account. The permit holder must pay postage and extra service fees through an advance deposit account and must pay an annual account maintenance fee. When an advance deposit account is kept at each entry location, a separate permit (except as provided under 3.2.11 and for qualified national permit holders using scan based payment for returns) is needed and the annual merchandise return service permit and annual

account maintenance fees must be paid at each Post Office. The fee (in effect on the date of the payment) may be paid for the next 12 months, during the last 60 days of the service period, before the anniversary date of the initial fee payment. A separate advance deposit account for MRS is not required; the annual account maintenance fee is charged if MRS postage and fees are paid from an existing account:

a. For each withdrawal, only one statement is provided for each annual account maintenance fee paid.

b. The permit holder must pay an annual account maintenance fee for each separate statement (accounting) requested.

* * * * *

3.1.3 Postage

Merchandise return service parcels are charged single-piece price postage and extra service fees based on the class or subclass marking on the label. If a parcel is unmarked or marked Media Mail, Library Mail, or Bound Printed Matter, then it is charged Parcel Select Nonpresort prices. If the postage for the returned parcel is zoned and there is no way to determine its zone of origin (*i.e.,* no postmark or return address), then postage is calculated at zone 4 (for Priority Mail, or for pieces marked ''Ground'' and charged at Parcel Select Nonpresort prices). Postage is deducted from an advance deposit account.

* * * * *

3.1.5 Priority Mail Commercial Base and Commercial Plus Prices

Priority Mail Commercial Base and Commercial Plus prices are available to MRS permit holders when the following criteria are met:

[Revise the text of 3.1.5 item a by deleting the second sentence.]

* * * * *

3.2 Basic Standards

3.2.1 Description

[Revise the text of 3.2.1 to read as follows:]

Merchandise return service allows an authorized Returns Services permit holder to pay the postage and extra service fees on single-piece priced Priority Mail, or First-Class Package Service or ground return service parcels (Parcel Select Nonpresort) that are returned to the permit holder by the permit holder's customers via a special barcoded label (see 3.5.10) produced by the permit holder.

* * * * *

[Delete 3.2.5, IMpb Standards, in its entirety, (context of text in new item j. under 3.5.10, Label Format Elements) then, renumber current 3.2.6 through 3.2.14 as new 3.2.5 through 3.2.13.]

* * * * *

3.2.6 Application Process

[Revise the text of 3.2.6 to read as follows:]

The applicant must submit a completed Form 3615 and the annual permit fee to the Post Office issuing the permit, or amend an existing Form 3615 on file at that office by adding the merchandise return service authorization to existing Returns Service permit authorizations. Except for MRS labels generated by the USPS Application Program Interface (API), Form 3615 must be accompanied by copies of the MRS labels (including printed copies of labels intended to be faxed to customers or transmitted to customers electronically) and the instructions provided to the permit holder's customers. All MRS labels that have preprinted USPS Tracking barcodes must be approved by the USPS. If articles are to be returned from customers as Registered Mail, the applicant must indicate ''Registered Mail'' on the application. After a MRS permit is obtained, any change to label formats or customer instructions must be approved by the Post Office where the permit is held. The permit is valid for 12 months after the approval date of the application.

[Delete renumbered 3.2.7, Procedure, (text relocated in 3.1.1), 3.2.8, Multiple Accounts, (text relocated in 3.1.2) in their entirety, then renumber recently renumbered 3.2.9 through 3.2.13 as new 3.2.7 through 3.2.11.]

[Revise the title and text of newly renumbered 3.2.7, Renewal, to read as follows:]

3.2.7 Permit Renewal

To renew the MRS permit, the permit holder must send the annual fees (under 3.1.1 and 3.1.2) to the issuing Post Office by the expiration date of the permit, or authorize the Postmaster to deduct the fee from the advance deposit account, or establish a CAPS link for EFT. If a permit holder's outbound permit account shows any amount of outbound parcel volumes, the annual Returns Services permit and account maintenance fees may be waived at the time of renewal. Written authorization is not needed for permit renewal if there is no change to the authorization on file at the delivery unit.

3.2.8 Nonrenewed Permit

[Revise the text of 3.2.8 to read as follows:]

If the permit is not renewed, merchandise return mail bearing the sender's return address is returned to the sender; otherwise, it is treated as dead mail.

3.2.9 Permit Cancellation

[Revise the text of 3.2.9 to read as follows:]

The USPS may cancel a MRS permit if the permit holder refuses to accept and pay postage and fees on merchandise return service parcels, fails to keep sufficient funds in the advance deposit account to cover postage and fees, or distributes merchandise return labels or tags that do not meet USPS standards.

3.2.10 Reapplying After Cancellation

[Revise the text of 3.2.10 to read as follows:]

To receive a new MRS permit at the same Post Office after a merchandise return permit is canceled, the applicant must amend the Form 3615 on file at that office to reflect the new application date; pay a new permit fee; submit for approval two samples of any label format to be used; provide evidence that the reasons for the permit cancellation are corrected; and provide and keep funds in an advance deposit account to cover normal returns for at least 2 weeks.

3.2.11 Using Other Post Offices

[Revise the text of 3.2.11 to read as follows:]

The permit holder may distribute merchandise return labels for return through other Post Offices (*i.e.* stations or branches under a Main Post Office) without paying an additional permit fee if the permit holder opens and keeps their advance deposit account at the Post Office where the permit is issued and supplies that Postmaster the name, address, and telephone number of a representative in each additional station or branch if different from the information on the application.

[Revise the title of 3.3, Additional Standards for Permit Holder, to read as follows:]

3.3 Additional Standards for MRS

[Revise the title and text of 3.3.1 to read as follows:]

3.3.1 Extra and Additional Services

The MRS permit holder may obtain extra and additional services with MRS as follows:

a. Insurance—Which may be combined with special handling) for MRS containing only matter not required to be mailed at First-Class Mail prices under 133.3.0. To request insurance, the permit holder must preprint or rubber-stamp ''Insurance

Desired by Permit Holder for $____ (value)'' to the left of and above the ''Merchandise Return Label'' legend and below the ''Total Postage and Fees Due'' statement on the merchandise return label. The value part of the endorsement, showing the dollar amount of insurance for the article, may be handwritten by the permit holder. If insurance is paid for by the MRS permit holder, then only the MRS permit holder may file a claim (609).

b. Registered Mail—May be obtained by the MRS permit holder under the following conditions:

1. The customer using the MRS label must declare the full value of the article to be registered when presented at the Post Office. Registered Mail service may be obtained only on articles returned at Priority Mail or First-Class Package Service prices and may not be combined with any other extra service.

2. A permit holder wanting to add Registered Mail service under an existing permit must submit a written request to the Post Office where the permit is held, with samples of the merchandise return labels and a copy of the instructions to be provided to the permit holder's customers. The permit holder must not distribute labels that request Registered Mail service before receiving USPS written approval.

c. Special Handling—The permit holder may obtain special handling service with MRS.

d. Pickup on Demand Service—The permit holder may obtain Pickup on Demand service with MRS. Pickup on Demand service may be combined with Certified Mail (Priority Mail only), USPS Tracking, and special handling.

e. USPS Tracking—(which may be combined with insurance and special handling or both) is included with MRS when the MRS labels are properly formatted under 3.5.10.

f. Mailing Acknowledgment—The permit holder may prepare a detachable mailing acknowledgment form, subject to these conditions:

1. The acknowledgment must not bear adhesive but must be attached to the label and perforated or designed for easy separation at the time of mailing.

2. The acknowledgment establishes no USPS liability for the parcel if damaged, lost, or stolen.

3. The acknowledgment provides documentation for account management between the mailing customer and the permit holder. The USPS charges no fee, keeps no records, and does not provide copies of or further information about the acknowledgment.

4. A merchandise return service parcel containing the detachable mailing acknowledgment form must be presented to the USPS acceptance employee at the time of mailing to be executed.

5. Each mailing acknowledgment part of the label must include a unique parcel identification number assigned by the permit holder; the return address of the customer mailing the parcel, in the upper part of the detachable form; the permit holder's address, in the lower part of the form; an initials section in the acknowledgment portion for use by the USPS acceptance employee; and space in the acknowledgment part where the USPS acceptance employee places the date stamp.

[Delete 3.3.2, Registered Mail, through 3.3.7, Mailing Acknowledgment, in their entirety (context of text relocated to 3.3.1).]

3.4 Additional Standards for Permit Holder's Customer

3.4.1 Customer Options

[Revise the text of 3.4.1 to read as follows:]

If the permit holder has not indicated the extra services listed in 3.3.1a through 3.3.1d a customer may request the extra services listed in 3.3.1a through 3.3.1d at their own expense.

3.4.2 Insurance

[Revise the text of 3.4.2 to read as follows:]

If insurance is paid by the customer, then only the customer may file a claim.

3.4.3 Certificate of Mailing

* * * * *

[Revise the title of 3.5, Preparation, to read as follows:]

3.5 Labels

3.5.1 Distribution of Labels

[Revise the text of 3.5.1 to read as follows:]

Merchandise return service labels may be distributed to customers as an enclosure with merchandise, as a separate item (including when requested electronically through the Business Customer Gateway for printing and delivery to the end-user by USPS), as part of a double postcard subject to 201.1.2.8 and the approval of the PCSC, as an electronic transmission for customer downloading and printing, or through one of the permit holder's designated pickup facilities. Any such label distributed to a customer must meet the format standards in 3.5.10, including the requirement to furnish instructions.

[Delete 3.5.2, Labels, in its entirety (text relocated to introductory text of renumbered 3.5.10, Label Format Elements); then, renumber 3.5.3 through 3.5.14 as new 3.5.2 through 3.5.13.]

[Revise the title and text of renumbered 3.5.2 to read as follows:]

3.5.2 Mailer Price Markings

It is recommended that permit holders preprint a price marking (or ''Ground'' for ground service charged at Parcel Select Nonpresort prices) on the merchandise return service labels they distribute to ensure that returned parcels will be given service and charged postage according to the wishes of the permit holder. Regardless of weight, all unmarked parcels will be treated as Standard Post and charged Parcel Select Nonpresort prices.

[Revise the title and text of renumbered 3.5.3 to read as follows:]

3.5.3 Label Preparation

Any photographic, mechanical, or electronic process or any combination of such processes other than typewriting or handwriting may be used to prepare the MRS label and detachable acknowledgment form. The background may be any light color (excluding brilliant colors) that allows the address, postmark, and other endorsements to be readily discerned. If labels are faxed to customers or electronically transmitted to customers for their local printing, the permit holder must advise their customers of these preparation requirements as part of the required instructions required under 3.5.5. All MRS labels bearing the required IMpb (with imbedded USPS Tracking) must be certified for use by the USPS prior to distribution. Labels with USPS Tracking barcodes cannot be faxed to customers.

[Revise the title and text of renumbered 3.5.4 to read as follows:]

3.5.4 Labeling Methods

If all applicable content and format standards are met (including the written instructions required by 3.5.5), a merchandise return service label may be produced by any of the following methods:

* * * * *

[Revise the text of renumbered 3.5.4 item c to read as follows:]

c. Printed and delivered by USPS to the customer (end-user) when requested electronically by the permit holder or its agents through the Business Customer Gateway.

* * * * *

[Revise the title of renumbered 3.5.5 to read as follows:]

3.5.5 Labeling Instructions

Written instructions must be provided with the label that, at a minimum, directs the customer to do the following:

* * * * *

[Revise renumbered 3.5.5 item d by changing any blue colored text to black.]

d. ''Mail the labeled parcel at a Post Office, drop it in a collection box, leave it with your letter carrier, or schedule a package pickup at *usps.com*.''

[Delete renumbered 3.5.6, Insured Markings, in its entirety (context of text relocated more appropriately under 3.5.8); then, insert new 3.5.6 to read as follows:]

3.5.6 Special Handling Endorsement

To request special handling, the permit holder must preprint or rubber-stamp ''Special Handling Desired by Permit Holder'' to the left of and above the ''Merchandise Return Label'' legend and below the ''Total Postage and Fees Due'' statement on the merchandise return label.

* * * * *

[Revise the title and text of renumbered 3.5.8 to read as follows:]

3.5.8 Placement of Extra Service Labels

The permit holder must either leave a clear space on the merchandise return label to the right of the return address for the placement of the applicable extra service label (see 503.1.7.2 for additional standards for extra service labels) or instruct the customer to affix the merchandise return label to the article so that the USPS acceptance employee can place the extra service label on the article directly above the merchandise return label.

[Delete renumbered 3.5.9, Placement of Return Receipt for Merchandise Label, (context of text relocated more appropriately under 3.5.8) and 3.5.10, Special Handling Endorsement, (context of text relocated to 3.5.6) in their entirety; then, renumber newly renumbered 3.5.11 through 3.5.13 as new 3.5.9 through 3.5.11.]

[Revise the title and text of renumbered 3.5.9 to read as follows:]

3.5.9 Additional Standards for Special Handling Labels

In addition to meeting the standards under 3.5.6 and 3.5.8, as applicable, the permit holder must provide ''Special Handling'' labels with instructions to customers about their placement on the parcel.

[Revise the title, complete text, and exhibits, of newly renumbered 3.5.10 to read as follows:]

3.5.10 Label Format Elements

The label used for merchandise return service must meet the standards in the Parcel Labeling Guide available on RIBBS.

[Delete renumbered 3.5.11, Certificate of Mailing, in its entirety (already stated in 505.3.4.3).]

3.6 Enter and Deposit

3.6.1 Customer Mailing Options

[Revise the last section of the first sentence of 3.6.1 to read as follows:]

* * *; or at any place designated by the Postmaster for the receipt of mail.

* * *

[Insert new 3.7 to read as follows:]

3.7 Additional Standards for USPS Return Services

3.7.1 Permit and Account Fees

An annual Returns Services permit fee, under 3.1.1, and annual account maintenance under 3.1.2, are required for the USPS Return Services described in 3.7.

3.7.2 Extra Services

USPS insurance is the only extra service that can be purchased for USPS Returns (Priority Mail Return Service, First-Class Package Return Service and Ground Return Service). There is no included insurance provided for Priority Mail Return Service pieces.

3.7.3 Prices

Commercial Base prices are available for permit holders receiving Priority Mail Return Service and First-Class Package Return Service mailpieces under 3.7.

Permit holders may combine cumulative volumes for Priority Mail Return Service and First-Class Package Return Service. Eligibility for Commercial Plus prices are available to permit holders who qualify for Commercial Base prices, and at least one of the following:

a. Have cumulative Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service volume exceeding a combined total of 25,000 return pieces in the previous calendar year.

b. Have cumulative returns Commercial Plus cubic (see 1.1.4) volume exceeding a combined total of 85,000 pieces returned in approved packaging in the previous calendar year.

c. Have cumulative returns and outbound volume exceeding a combined total of 90,000 pieces in the previous calendar year.

d. Have a signed Commercial Plus returns customer commitment agreement with USPS.

e. Have a signed commercial plus Critical Mail commitment agreement with USPS.

3.7.4 Postage

Postage is calculated based on the weight of the parcel and zone, except for First-Class Package Return Service, for which postage is based on the weight of the parcel and Critical Mail returns, for which postage is based on flat rate pricing. Customers must pay postage under a scan based payment program (705.24.0) and using an eVS/CAPS account.

3.7.5 Description

Priority Mail Return Service (including Critical Mail), First-Class Package Return Service and Ground Return Service provide return service options to customers who meet the applicable standards in 3.0. Except for restricted material described in Publication 52, any mailable matter may be mailed using any of the USPS Return Service options. Any content that constitutes First-Class Mail matter may only be mailed using Priority Mail Return Service or using First-Class Package Return Service at Commercial Plus prices.

3.7.6 Labels

USPS Return Service labels must meet the standards in the Parcel Labeling Guide available on RIBBS. USPS Return Services standard label sizes are 3 inches by 6 inches, 4 inches by 4 inches, or 4 inches by 6 inches and must be certified by the USPS for use prior to distribution. All other label sizes require written approval from the National Customer Support Center (NCSC). The label must include an Intelligent Mail package barcode, accommodate all required elements, be legible, and be prepared in accordance with 708.5.0 and Publication 205 at *https://ribbs/evs/documents/tech_guides/pubs/Pub205.PDF*. Permit holders or their agents may distribute approved USPS Return Service labels and instructions by means listed under 3.5.4. Permit holders or their agents must provide written instructions to the label end-user (mailer) as provided under 3.5.5. The label used for USPS Returns must meet the standards in the Parcel Labeling Guide available on RIBBS.

3.7.7 Additional Standards for Priority Mail Return Service

Priority Mail Return Service may contain any mailable matter weighing no more than 70 pounds. Lower weight limits apply to Commercial Plus cubic (see 1.1.4), APO/FPO mail is subject to 703.2.0 and 703.4.0, and Department of State mail is subject to 703.3.0. Priority Mail Return Service receives expeditious handling and transportation, with service standards in

accordance with Priority Mail. Priority Mail Return Service items mailed under a specific customer agreement is charged postage according to the individual agreement. Otherwise Priority Mail Return Service eligibility is under 3.7.3. Commercial Base and Commercial Plus prices are the same as for outbound Priority Mail in Notice 123—Price List.

3.7.8 Additional Standards for First-Class Package Return Service

First-Class Package Return Service handling, transportation, and eligibility of contents is the same as for outbound First-Class Package Service parcels under 433. Parcels weighing more than 13 ounces but less than 16 ounces may be included in the eligibility calculation for Commercial Plus prices and parcels weighing 13 ounces or less are eligible for Commercial Base prices.

3.7.9 Additional Standards for Ground Return Service

Ground Return Service provides ground transportation for mailpieces containing mailable matter weighing no more than 70 pounds and meeting the content standards in 153.3.0. Ground Return Service assumes the handing and transportation and service objectives for delivery of Standard Post.

[Delete current 4.0, USPS Returns, in its entirety; then, renumber current 5.0, Parcel Return Service, as new 4.0.]

4.0 Parcel Return Service

[Deleted renumber 4.1, Basic Information, in its entirety, (text relocated to new 4.3).]

[Renumber and retitle the 4.2 heading to read as follows:]

4.1 Prices and Fees

[Deleted 4.2.1, Postage, in its entirety (text relocated to new 4.1.3).]

[Renumber and retitle 4.2.2 as follows:]

4.1.1 Permit and Account Fees

[Revise renumbered 4.1.1 to read as follows:]

The participant must pay an annual Returns Services permit fee at the Post Office where the permit is held, and must pay postage through an advance deposit account by paying an annual account maintenance fee. See Notice 123—Price List for applicable fees.

[Delete renumbered 4.2.2, Advance Deposit Account and Annual Account Maintenance Fee, in its entirety, (context of text relocated to renumber 4.1.2).]

[Delete the renumbered heading 4.3, Prices.]

[Renumber 4.3.1, Parcel Return Service Prices, as 4.1.2; then, delete 4.3.2 through 4.3.3 (text relocated to new 4.1.2); then revise the entire text to read as follows:]

4.1.2 Parcel Return Service Prices

Parcel Return Service prices are based on the price that applies to the weight increment of each addressed piece, and on the designated return facility, RDU, RSCF, or RNDC. The price is charged per pound or fraction thereof; any fraction of a pound is considered a whole pound. For example, if an item weighs 4.225 pounds, the weight increment is 5 pounds. The minimum price per piece is the 1-pound price and these additional standards apply:

a. Parcel Return Service—Nonmachinable Prices: Parcels exceeding the maximum machinable dimensions in 401.1.5 or are considered an outside parcel under 401.1.7 are subject to nonmachinable prices.

b. Balloon and Oversized Prices: RSCF and RNDC parcels that weigh less than 20 pounds but measure more than 84 inches in combined length and girth are charged the applicable price for a 20-pound parcel (balloon price). Regardless of weight, any parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized price.

c. Standard Post Prices: PRS-labeled parcels shipped from origin ZIP Codes 006–009, 967–969, and 995–999 that are picked up at an RNDC are subject to retail Standard Post prices.

[Insert new 4.1.3 as follows:]

4.1.3 Postage

There are three PRS price categories:

a. Parcel Return Service—RDU. Parcels returned as Standard Post to, and retrieved in bulk from, a designated delivery unit.

b. Parcel Return Service—RSCF. Parcels returned as Standard Post to, and retrieved in bulk from, a designated SCF.

c. Parcel Return Service—RNDC. Parcels returned as Standard Post to, and retrieved in bulk from, a designated NDC.

[Renumber current 4.3.5, Noncompliant Labels, as new 4.2.11.]

[Insert new 4.2 to read as follows:]

4.2 Basic Standards

4.2.1 Description

Parcel Return Service (PRS) applies to parcels that are picked up in bulk by authorized permit holders or their agents. Permit holders guarantee payment of postage for all parcels mailed with a PRS label. By providing an approved PRS label to its customers, the merchant or other party designates the permit holder identified on the label as their agent for receipt of mail bearing that label, and authorizes the USPS to provide that mail to the permit holder or its designee. The permit holder must retrieve parcels at each of the return network distribution centers (RNDC). For this purpose, an RNDC is each NDC as noted in L601. PRS permit holders also may retrieve parcels at one or more designated return sectional center facilities (RSCFs) or designated return delivery units (RDUs). Payment for parcels returned under PRS is deducted from a separate advance deposit (postage-due) account funded through the Centralized Account Processing System (CAPS). The permit holder must be authorized to use eVS (see 705.2.9).

4.2.2 Conditions for Mailing

Parcels may be mailed as PRS when all of the following conditions apply:

a. Parcels contain eligible matter as described in 153.3.0 and 153.4.0.

b. Parcels bear a PRS label that meets the standards in 5.4.

c. Parcels show the permit number, and the permit holder has paid the annual PRS permit fee and the annual PRS account maintenance fee.

4.2.3 Customer Mailing Options

Returned parcels may be deposited as follows:

a. At any Post Office, station, or branch.

b. In any collection box (except a Priority Mail Express box).

c. With any letter carrier.

d. As part of a collection run for other mail (special arrangements may be required).

e. At any place designated by the postmaster for the receipt of mail.

4.2.4 Application Process

Companies who wish to participate in PRS must send a request on company letterhead to the manager, Business Mailer Support (see 608.8.0 for address). The request must contain the following information:

a. Company name and address.

b. An individual's contact name, telephone number, fax number, and email address.

c. The price category or categories to be used, and the proposed retrieval locations (delivery units, sectional center facilities, and network distribution centers).

d. A description of the electronic returns manifesting system to be used to document returns listed by location and price eligibility.

4.2.5 Approval

The manager, Business Mailer Support reviews each request and proceeds as follows:

a. If the applicant meets the criteria, the manager, Business Mailer Support approves the letter of request and sends an authorization letter outlining the terms and conditions for the program.

b. If the application does not meet the criteria, the manager, Business Mailer Support denies the request and sends a written notice to the applicant with the reason for denial.

4.2.6 Permit Cancellation

USPS may cancel a PRS permit for any of the following reasons:

a. The permit holder fails to pay the required postage and fees for returned parcels.

b. The permit holder does not maintain adequate available funds to cover postage and fees for returned parcels.

c. The permit holder does not fulfill the terms and conditions of the PRS permit authorization.

d. The return labels do not conform to the specifications in 5.4.

4.2.7 Reapplying After Cancellation

To receive a new PRS permit after cancellation under 5.1.7, the mailer must:

a. Submit a letter to the manager, Business Mailer Support requesting a permit and a new agreement.

b. Pay a new Returns Services permit fee.

c. Provide evidence showing that the reasons for cancellation no longer exist.

d. Maintain adequate available funds to cover the expected number of returns.

4.2.8 Extra Services and Endorsement

Pieces using PRS may not bear an ancillary service endorsement (see 102.4.0 and 507.1.5). See 503.0 for available extra services for PRS.

4.2.9 Pickup Schedule and Location

Permit holders or their agents must set up recurring or standing appointments to retrieve PRS parcels. If the permit holder (or agent) has existing appointments to deliver Parcel Select parcels to destination facilities and those facilities are one of the NDCs, designated RSCFs, or designated RDUs, those appointments can be used for retrieving PRS parcels at the same time. Permit holders or their agents must retrieve parcels on a regular schedule as follows:

a. From RNDCs, at a minimum of every 48 hours, excluding Sundays and USPS holidays.

b. From all listed RSCFs, at a minimum of every 24 hours, excluding Saturdays, Sundays, and USPS holidays. The Postal Service maintains a list of active RSCFs and provides permit holders 30-day notice of changes to the list. This list is available on the Facility Access and Shipment Tracking system (FAST) at *https://fast.usps.com/fast/*.

c. From RDUs, according to the authorization letter. The USPS maintains a list of active RDUs and provides permit holders 30-day notice of changes to the list. This list is available on the Facility Access and Shipment Tracking system (FAST) at *https://fast.usps.com/fast/*.

d. For parcels picked up from RNDCs and that are shipped from origin ZIP Codes 006–009, 967–969, and 995–999, see 5.3.

4.2.10 Parcels Endorsed Hold for Pickup

PRS participants must pay the appropriate Parcel Return Service RDU price under 5.3 for any unclaimed, refused, undeliverable as addressed, or recalled parcels that are endorsed ''Hold For Pickup'' (under 508.7.0) and that bear the marking ''PARCEL RETURN SERVICE REQUESTED'' or ''PRS REQUESTED'' followed by a unique 569 prefix ZIP Code.

4.2.11 Noncompliant Labels

PRS permit holders must use USPS-certified labels meeting the standards in 4.3. When noncompliant labels are affixed to PRS parcels, which travel through the Postal network to the delivery address of the label, the permit holder will be assessed the appropriate Standard Post price, calculated from the parcel's entry point in the USPS network to its delivery address. If the parcel's entry point cannot be determined, then postage will be calculated at zone 4.

[Revise the title of renumbered 4.3 as follows:]

4.3 Labels

4.3.1 Label Preparation

[Revise renumbered 4.3.1 to read as follows:]

PRS labels must be certified by the USPS for use prior to distribution as defined in the service agreement. In addition, permit holders must obtain USPS certification for barcode symbologies. Except for by FAX, any photographic, mechanical, or electronic process or any combination of these processes may be used to produce PRS labels. The background of the label may be any light color that allows the address, barcodes, and other required information to be easily distinguished. If labels are electronically transmitted to customers for their local printing, the permit holder must advise customers of these printing requirements as part of the instructions in 4.3.3.

4.3.2 Labeling Methods

[Revise renumbered 4.3.2 to read as follows:]

If all applicable contents and formats are approved (including instructions to the user), permit holders or their agents may distribute a PRS label by any of the methods provided under 3.5.4.

[Revise the title and text of renumbered 4.3.3 to read as follows:]

4.3.3 Labeling Instructions

Regardless of label distribution method, permit holders or their agents must always provide written instructions to the user of the PRS label as provided under 3.5.5.

4.3.4 Label Format Elements

[Revise renumbered 4.3.4 to read as follows:]

PRS labels must meet the standards in the Parcel Labeling Guide available on RIBBS. There is no minimum size for PRS labels; however, the label must be big enough to accommodate all of the label elements and standards in this section. All PRS label elements must be legible. Except where a specific type size is required, elements must be large enough to be legible from a normal reading distance and be separate from other elements on the label.

[Delete 6.0, Parcel Return Service-Full Network, in its entirety.]

[Renumber current 7.0, Bulk Parcel Return Service, as new 6.0.]

6.0 Bulk Parcel Return Service

[Retitle renumbered 6.1 to read as follows;]

6.1 Bulk Parcel Return Service (BPRS) Permit and Fees

[Delete renumbered 6.1.1, Permit Fee, through 6.1.3, Per Piece Charge, in their entirety (text relocated in new 6.1.1).]

[Delete the renumbered heading 6.2, Charges and Fees.]

[Renumber 6.2.1 through 6.2.6 as new 6.1.1 through 6.1.6, then, revise the title and text of renumbered 6.1.1 to read as follows:]

5.1.1 Permit and Per Piece Fees

A BPRS permit is required to participate in BPRS; no annual fee is required to obtain a BPRS permit. Each piece returned through BPRS is charged only the per piece fee, not postage, regardless of weight. See Notice 123—Price List for applicable fees.

[Delete renumbered 6.1.2, Per Piece Fee, in its entirety (context of text

relocated under 6.5.1); then, renumber 6.1.3 through 6.1.6 as new 6.1.2 through 6.1.5.]

[Revise the title and text of newly renumbered 5.1.2 to read as follows:]

6.1.2 Advance Deposit Account

The permit holder must pay BPRS fees through an advance deposit account. A separate advance deposit account for BPRS is not required; the annual account maintenance fee is charged if BPRS fees are not paid from an existing account and the permit holder desires a single, separate accounting of all charges deducted from that account.

[Delete renumbered 6.1.3, Existing Advance Deposit Account, (relocated to 6.1.2, Advance Deposit Account), and 6.1.4, Payment Guarantee, (relocated to 6.2.3 under Availability), in their entirety; then, renumber 6.1.5, Postage Due Weight Averaging, as new 6.1.3.]

* * * * *

[Renumber 6.3, General Information, as new 6.2, then revise the title of renumbered 6.2, General Information, to read as follows:]

6.2 Basic Standards

6.2.1 Description

[Revise renumbered 6.2.1 to read as follows:]

Bulk parcel return service (BPRS) allows mailers of large quantities of Standard Mail or Parcel Select Lightweight machinable parcels that are either undeliverable-as-addressed or unopened and refused by addressees to be returned to designated postal facilities. The mailer has the option of picking up all returned parcels from a designated postal facility at a predetermined frequency specified by the USPS or having them delivered by the USPS in a manner and frequency specified by the USPS. For this service, a mailer establishes a BPRS permit and pays a per piece charge for each parcel returned from an advance deposit account.

6.2.2 Availability

[Revise renumbered 6.2.2 to read as follows:]

A mailer may be authorized to use BPRS when the following conditions apply:

a. All returned parcels are initially prepared as regular or Nonprofit Standard Mail, or Parcel Select Lightweight, and are machinable parcels as defined in 201.7.5.

b. At least 10,000 Standard Mail or Parcel Select Lightweight machinable parcels will be returned to a designated postal facility during a 12-month period.

c. Parcels are returned to the mailer either because they are undeliverable-as-addressed or because they are unopened and refused by the addressee.

d. Parcels bear an approved BPRS label or one of the following BPRS endorsements (507.2.0) on the outbound mailpiece:

''Return Service Requested—BPRS''

''Address Service Requested—BPRS''

e. Parcels have a return address that is in the delivery area of the Post Office that issued the BPRS permit.

f. The postal facility designated for returned parcels is located in the United States, its territories or possessions, or is a U.S. military Post Office overseas (APO or FPO).

g. The mailer has a valid postage due advance deposit account and BPRS permit.

h. BPRS parcels may be combined with the shipper paid forwarding service (507.4.2.9).

i. Standard Mail or Parcel Select Lightweight parcels that qualify for a Media Mail or Library Mail price under the applicable standards, and that contain the name of the Package Service price in the mailer's ancillary service endorsement (507.1.5.3d.), are not eligible for BPRS.

[Delete renumbered 6.2.3, Optional Label, in its entirety (text relocated to 6.4.2); then, insert new 6.2.3, Payment Guarantee, to read as follows:]

6.2.3 Payment Guarantee

The permit holder guarantees payment of all applicable fees. The Post Office returns BPRS items to the permit holder only when there are sufficient funds in the advance deposit account to pay the fees on returned pieces.

[Delete renumbered 6.2.4, Extra Services, in its entirety (text relocated to New 6.2.4).]

[Delete renumbered heading 6.4, Permits, in its entirety.]

[Renumber current 6.4.1, Application Process, through 6.4.3, Postage Due Service Agreement, as 6.2.4 through 6.2.6; then, retitle renumbered 6.2.4 to read as follows:]

6.2.4 Application Process

[Revise the introductory text and items a, b, and f, of renumbered 6.2.4 to read as follows:]

To obtain a BPRS permit, a mailer must send a written request to the Postmaster at each Post Office where parcels are to be returned that includes the following:

a. Request for the BPRS permit.

b. Information pertinent to each requested delivery point that documents either the receipt of, or that there are reasonable grounds to expect, at least 10,000 machinable parcels originally mailed at regular or non-profit Standard Mail or Parcel Select Lightweight prices during the past, or next, 12 months.

* * * * *

f. If a label will be furnished for returning opened parcels, the labels must be USPS approved, prepared in accordance with 6.5, and must be accompanied by complete instructions for its use as described in 3.5.5.

6.2.5 Authorization

[Revise the text of renumbered 6.2.5 to read as follows:]

A BPRS mailer will be required to sign a postage due service agreement with each Post Office that issues a permit for the return of BPRS parcels. Upon approval of a mailer's request, the Post Office issues an authorization letter and provides a postage due service agreement with a BPRS permit number. The permit number is used for account administration and is required on BPRS labels under 6.5, when used.

[Delete renumbered 6.2.6, Postage Due Service Agreement, (text relocated to 6.2.5), in its entirety.]

[Insert new heading, 6.3 Permits]

6.3 Permits

[Renumber 6.4.4 as new 6.3.1 and revise text to read as follows:]

6.3.1 Permit Renewal

A Post Office provides BPRS permit holders with annual renewal notices advising that their permits are due to expire. A notice must be returned to the issuing Post Office with the fee payment or authorization for the postmaster to deduct the fee from the advance deposit account by the permit expiration date. Written authorization is not necessary for renewal of a permit if there is no change to the authorization on file at the Post Office where the parcels are returned. If a permit holder does not renew a BPRS permit after having been given notice, the USPS will endorse the mail ''Bulk Parcel Return Service Canceled'' and will charge postage due at the single-piece First-Class Mail or Priority Mail price as appropriate for the weight of the piece. If the single-piece First-Class Mail or Priority Mail price is not paid, the mail is forwarded to the nearest mail recovery center.

[Renumber 6.4.5 and 6.4.6 as new 6.3.2 and 6.3.3.]

6.3.2 Permit Cancellation

A BPRS permit may be canceled by the USPS for any of the following reasons:

* * * * *

[Revise the text of renumbered 6.3.2 item e to read as follows:]

e. Failure to conform return labels to the specifications in section 6.5.

6.3.3 Reapplying After Cancellation

A mailer must do the following to receive a new BPRS permit at the same Post Office where a permit was previously canceled:

[Revise the text of renumbered 6.3.3 items a to read as follows; then, delete item b in its entirety; then, renumber items c and d and new items b and c:]

a. Submit a letter to that office requesting a BPRS permit and new agreement.

* * * * *

[Insert new section 6.3.4 as follows:]

6.3.4 Extra Services

Extra services cannot be added to pieces returned via bulk parcel return service.

[Revise the title and text of renumber 6.5, Label Requirements, to read as follows:]

6.5 Optional BPRS Label

An authorized BPRS permit holder has the option to use a label to identify BPRS parcels for return to a designated postal facility. The label is prepared at the mailer's expense and must meet all format standards in the Parcel Labeling Guide available on RIBBS, including an IMpb meeting the standards in 708.5.0.

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

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1.5.3 Standard Mail and Parcel Select Lightweight

Undeliverable-as-addressed (UAA) Standard Mail and Parcel Select Lightweight pieces are treated as described in Exhibit 1.5.3, with these additional conditions:

* * * * *

Exhibit 1.5.3 Treatment of Undeliverable Standard Mail and Parcel Select Lightweight

[Revise (only) the two designated sections of Exhibit 1.5.3 titled Address Service Requested (Option 1 and Option 2) and Change Service Requested[1 4] (Option 1 and Option 2) to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
No Endorsement[1]	* * * * *
"Electronic Service Requested"	* * * * *
"Address Service Requested"	(Does not include Shipper Paid Forwarding/Return participants)
OPTION 1	* * * * *
OPTION 2	* * * * *
"Address Service Requested"	* * * * *
Shipper Paid Forwarding/Return Option 1	* * * * *
Shipper Paid Forwarding/Return Option 2	* * * * *
Shipper Paid Forwarding/Return Option 3	* * * * *
"Address Service Requested—BPRS"	* * * * *
"Forwarding Service Requested"[3]	* * * * *
"Return Service Requested"	* * * * *
OPTION 1.	
OPTION 2.	
"Return Service Requested—BPRS"	* * * * *
"Change Service Requested"[1 4].	
OPTION 1	*(Valid for all pieces, including ACS participating pieces)* If no change-of-address order on file, or if change-of-address order is on file: Notice of new address or reason for non-delivery provided (address correction fee charged); piece disposed of by USPS. *Restrictions:* The following restrictions apply: (1) USPS Tracking is the only extra services permitted with this endorsement. (2) This endorsement is not permitted for Standard Mail or Parcel Select Lightweight containing hazardous materials.
OPTION 2	*(Available via ACS only; for Standard Mail letters and flats only)* If no change-of-address order on file: Reason for non-delivery provided to mailer (electronic ACS fee charged); piece disposed of by USPS. If change-of-address order on file: • Months 1 through 12: Piece forwarded; postage due charged to the mailer at applicable Forwarding Fee based on the piece shape (letter or flat); separate notice of new address provided (electronic ACS fee charged). • Months 13 through 18: Piece disposed of by USPS; separate notice of new address provided (electronic ACS fee charged). After month 18: Treatment same as noted under "If no change-of-address order on file". *Restrictions:* The following restrictions apply: (1) USPS Tracking is the only extra services permitted with this endorsement. (2) This endorsement is not permitted for Standard Mail containing hazardous materials.
"Change Service Requested"	* * * * *

* * * * *

1.5.4 Standard Post, Package Services and Parcel Select

Undeliverable-as-addressed (UAA) Standard Post, Package Services, and Parcel Select mailpieces are treated as described in Exhibit 1.5.4, with these additional conditions:

* * * * *

Exhibit 1.5.4 Treatment of Undeliverable Standard Post, Package Services, and Parcel Select

[Revise (only) the designated section of Exhibit 1.5.4 titled Change Service Requested[2] (Option 1 and Option 2) to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
No Endorsement	* * * * *
"Electronic Service Requested"	* * * * *
"Address Service Requested"	* * * * *
"Address Service Requested"	* * * * *
"Forwarding Service Requested"[1]	* * * * *
"Return Service Requested"	* * * * *
Option 1. Option 2. "Change Service Requested"[2].	
Option 1	*(Valid for all pieces, including ACS participating pieces)* If no change-of-address order on file, or if change-of-address order is on file: Notice of new address or reason for non-delivery provided (address correction charged): piece disposed of by USPS. *Restrictions:* The following restrictions apply: (1) USPS Tracking and Signature Confirmation are the only extra services permitted with this endorsement. (2) This endorsement is not permitted for Standard Post or Package Services containing hazardous materials.
Option 2	*(Available via ACS only; for Bound Printed Matter flats only)* If no change-of-address order on file: Reason for non-delivery provided to mailer (electronic ACS fee charged); piece disposed of by USPS. If change-of-address order on file: • Months 1 through 12: Piece forwarded; postage due charged to the mailer at applicable Forwarding Fee based on the piece shape (flat); separate notice of new address provided (electronic ACS fee charged). • Months 13 through 18: Piece disposed of by USPS; separate notice of new address provided (electronic ACS fee charged). After month 18: Treatment same as noted under "If no change-of-address order on file".
"Change Service Requested"	* * * * *

* * * * *

2.0 Forwarding

2.1 Change-of-Address Order

2.1.4 Methods of Filing

Customers may use one of the following methods to file a change-of-address with the Post Office:

* * * * *

[Delete item c. in its entirety.]

* * * * *

3.0 Premium Forwarding Services

* * * * *

3.3 Premium Forwarding Service Commercial

3.3.1 Description

[Revise the text of 3.3.1 to read as follows:]

Premium Forwarding Service Commercial (PFS Commercial) provides business commercial customers the option to have USPS gather their mail addressed to business PO Boxes (including Caller Service) or business street addresses within the same servicing postal facility, and dispatch the mail as Priority Mail Express or Priority Mail shipments to a new address in bulk. Customers must establish a service agreement with the USPS, pay an annual enrollment fee, and the applicable postage for the class of mail desired for the shipments. See Notice 123—Price List.

3.3.2 Authorization

[Revise the text of 3.3.2 to read as follows:]

Commercial customers may establish PFS Commercial service through the *Business Customer Gateway* for shipments selected, as desired as Priority Mail Express or Priority Mail. Requests must specify the business PO Boxes (or Caller Service) or business street delivery addresses, destination address, frequency (Monday through Saturday), and the postage payment method (see 3.3.3b). For customers using Priority Mail Express and paying postage through a USPSCA (corporate account), the enrollment request may be made in writing to the Postmaster at the origin Post Office. Service is activated upon approval by the Postmaster for the origin office.

3.3.3 Additional Conditions

[Revise the text of 3.3.3 to read as follows:]

Only the authorized recipient (or legal agent) of the business' (or organization's) mail may activate the request for PFS Commercial service. PFS Commercial service agreements are subject to these additional standards:

a. Customers must pay an annual enrollment fee to establish service, regardless of the number of individual

business PO Boxes, Caller Service numbers, or business street delivery addresses included for each servicing Post Office. The enrollment fee is refundable only if the request is denied.

b. For requests made in writing to the origin Post Office, the annual enrollment fee may be paid at a retail Post Office location, station, or branch; the applicable Priority Mail Express postage for each shipment container is paid using the customer's USPSCA. For requests made through the *Business Customer Gateway,* the annual enrollment fee and applicable Priority Mail Express or Priority Mail postage for each shipment container is paid using an eVS account linked to the Centralized Account Processing System (CAPS).

c. Regardless of payment method chosen, the postage is charged per shipment container as follows:

1. A sack or tray box and its contents are considered one piece for calculation of the price of postage and must not exceed 70 pounds. Postage is calculated by the weight of the container and the zone, based on the ZIP Code of the servicing Post Office and the delivery address for the shipment, minus the tare weight.

2. A Flat Rate envelope and its contents are considered one piece for the applicable Flat Rate price.

d. If no mail is collected for a shipment on a designated frequency day, no postage is charged.

e. Except under 3.3.3g, the following products may be included in a PFS Commercial service container: Priority Mail, First-Class Mail, and First-Class Package Services pieces.

f. The mailer must keep a postage-due merchandise return service (MRS) account, or business reply mail (BRM) account at the originating postal facility where the PO Box or business street address is located. Any short paid, MRS, or BRM pieces will be charged to the mailer's account prior to shipment. The customer's application must include confirmation that such an account exists.

g. Priority Mail Express, or mailpieces with USPS Tracking, Certified Mail, COD, insurance, Signature Confirmation, or Adult Signature are shipped to the destination delivery office Postmaster separately, for proper handling.

h. Registered Mail is not eligible for PFS Commercial service.

i. Business customers may terminate their PFS Commercial service agreement, effective 24 hours after the USPS receives the customer's written notice of termination at the serving Post Office or through the *Business Customer Gateway*. The customer must pay all postage and fees as applicable for any shipments already scheduled before termination of service is made effective.

j. USPS may terminate a customer's PFS Commercial service agreement, effective 24 hours after the customer receives written notice of termination from the serving Post Office. Termination is based upon the customer's failure to pay postage and fees, failure to meet the standards for PFS Commercial service, or when there is substantial reason to believe that the service is being or will be used for unlawful activities (in these cases, less than the 24-hour effective period may be granted by USPS). The customer may appeal this termination of services to the manager, Post Office Operations, but must pay for all postage and fees as applicable for any service provided during the appeal period.

* * * * *

4.0 Address Correction Services

* * * * *

4.2 Address Change Service (ACS)

* * * * *

4.2.8 Address Correction Service Fee

[Revise the text of 4.2.8 to read as follows:]

Unless excepted, the applicable fee for address correction is charged for each separate notification of address correction or the reason for nondelivery provided. Once the ACS fee charges have been invoiced, any unpaid fees for the prior invoice cycle (month) will be assessed an annual administrative fee of 10% for the overdue amount.

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.7 Priority Mail Express and Accountable Mail

[Revise the introductory text of 1.1.7 to read as follows:]

The following conditions also apply to the delivery of Priority Mail Express, Registered Mail, Certified Mail, mail insured for more than $500.00, Adult Signature, or COD, as well as mail for which a return receipt is requested or the sender has specified restricted delivery.

* * * * *

[Insert new 1.1.8 (relocated from previously deleted 503.8.0) as follows:]

1.1.8 Additional Delivery Standards for Restricted Delivery

In additional to the standards described under 1.1.7, mail marked ''Restricted Delivery'' is delivered only to the addressee or to the person authorized in writing as the addressee's agent (the USPS may require proof of identification from the addressee (or agent) to receive the mail, and under the following conditions:

a. Mail for famous personalities and executives of large organizations is normally delivered to an agent authorized to sign for such mail.

b. Mail for officials of executive, legislative, and judicial branches of the government of the United States or of the states and possessions and their political subdivisions, or to members of the diplomatic corps, may be delivered to a person authorized by the addressee or by regulations or procedures of the agency or organization to receive the addressee's mail.

c. Mail for the commander or other officials of military organizations by name and title, is delivered to the unit mail clerk, mail orderly, postal clerk, assistant postal clerk, or postal finance clerk, when such individuals are designated on DD (Department of Defense) Form 285 to receipt for all mail addressed to the units for which they are designated. If the person accepting mail is designated on DD Form 285 to receipt for ordinary mail only, then restricted delivery mail addressed to the commander, or other official by name and title, is delivered to the mail clerk only if authorized by the addressee.

d. Mail for an inmate of a city, state, or federal penal institution, in cases where a personal signature cannot be obtained, is delivered to the warden or designee.

e. Mail for minors or persons under guardianship may be delivered to their parents or guardians.

f. An addressee who regularly receives restricted delivery mail may authorize an agent on Form 3801 or by letter to the Postmaster and must include the notation ''this authorization is extended to include restricted delivery (or Adult Signature Restricted Delivery) mail''. Form 3849 also may be used for the authorization, if the Post Office has no standing delivery order or letter on file, when the addressee enters the name of the agent on the back of Form 3849 in the space provided and signs the form. The agent must sign for receipt of the article on the back of the form.

g. When mail is addressed to two or more persons jointly, all addressees or their agents must be present to accept

delivery together. The delivery receipt obtained and the return receipt, if any, must be signed by all joint addressees or their agents. The mail may then be delivered to any of the addressees or their agents unless one or more addressees or their agents object, in which case delivery is not made until all the addressees or their agents sign a statement designating who is to receive the mail.

h. Either person may sign for mail addressed to one person in care of another (*i.e.* ''In Care Of'').

* * * * *

4.0 Post Office Box Service

* * * * *

4.4 Basis of Fees and Payment

* * * * *

4.5 Fee Group Assignments

* * * * *

4.5.4 Additional Standards for Competitive PO Box Services

* * * Customers in competitive locations may also complete a customer agreement in order to receive one or more of the following enhancements:

[Revise 4.5.4 item a to read as follows:]

a. Street Addressing—The option to use the Post Office street address for their mailing address along with customer's box number preceded by as follows (customers who choose to use this designation also have the option of receiving packages from private carriers at the customer's Post Office Box address): John Smith, 123 Main Street #4567, Any Town, NY 10001.

* * * * *

[Revise 4.5.4 item c to read as follows:]

c. Signature on File—the option to simplify receipt of Priority Mail Express, mail insured for more $500.00, and Signature Confirmation items, all of which may include an electronic Return Receipt request, by providing a signature kept on file by the Postmaster.

* * * * *

5.0 Caller Service

* * * * *

5.8 Accelerated Reply Mail (ARM)

* * * * *

5.8.6 Mailer Receipt

[Revise the text of 5.8.6 to read as follows:]

The mailer may either pick up ARM at the origin facility caller service window or have it reshipped, through PFS Commercial (508.7) service, to the destination caller service address or to another address specified by the mailer. After updating a change to the destination address for the PFS Commercial service, the mailer must provide a 30-day advance notice and submit an amended ARM application, completing only the ''Applicant Information'' and ''Priority Mail Express PFS Commercial.''

* * * * *

604 Postage Payment Methods

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4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.5 Special Indicia

* * * * *

4.5.2 Reply Postage

[Revise the entire text of 4.5.2 (context of text relocated to 505.2.6, Prepaid Reply Mail), to read as follows:]

Mailers may use indicia generated by any postage evidencing system to prepay reply postage as provided under 505.2.0.

* * * * *

5.0 Permit Imprint (Indicia)

* * * * *

5.3 Indicia Design, Placement, and Content

* * * * *

[Revise the title and text of 5.3.5 to read as follows:]

5.3.5 Marking Expedited Handling on Permit Imprint Mail

Mailpieces bearing unofficial markings that reference directly or indirectly expedited attention, handling or delivery (*e.g.,* ''Urgent,'' ''Rush Delivery,'' ''Time Sensitive'') must meet the following conditions:

a. The indicia much show the class of mail (*e.g.* ''Standard'' or ''STD''; ''Presorted Standard'' or ''PRSRT STD''; or ''Nonprofit Organization,'' ''Nonprofit Org.,'' or ''Nonprofit'' or as applicable for the class of mail as provided under 5.3.6 or 5.3.7) more prominently than other words in the indicia.

b. Include a clear space of at least 3⁄8 inch around the entire indicia.

c. Pieces may not include markings identical to or confusingly similar to USPS trademarks (word marks or logos), trade dress, or other words, symbols, or designs used by the USPS to identify a class of mail, price of postage, or level of service, unless such markings are correctly used under the applicable standards for the mailpiece on which they appear and the corresponding postage and fees have been paid. Words, symbols or designs that are unlawful or legally actionable, or create a claim for false advertisements or contributory infringement (infringement of third party rights) are not permitted.

6.0 Payment of Postage

6.1 Basic Standards

The mailer is responsible for proper payment of postage. Postage on all mail must be fully prepaid at the time of mailing, except as specifically provided by standard for:

[Revise 6.1 items a and b to read as follows:]

a. Reply mail and return services under 505.0.

b. Alternate Postage payment under 5.5.

* * * * *

[Insert new item g under 6.1 to read as follows:]

g. Packages from private carriers being delivered to a customer at a competitive Post Office Box service location, when using the street addressing designation option, as provided under 508.4.5.4.

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.5 Applying for Refund

[Revise the first and the last sentences of 9.2.5 to read as follows:]

For refunds under 9.2, excluding postage refunds for extra service fees under 9.2.7, the customer must apply for a refund on Form 3533; submit it to the postmaster; and provide the envelope, wrapper (or a part of it) showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid. * * * Refunds for postage evidencing systems postage, excluding postage refunds for extra service fees under 9.2.7, are submitted under 9.3.

* * * * *

[Insert new 9.2.7 to read as follows:]

9.2.7 Applying for Extra Service Refund

For refunds for fees paid for extra services, as allowed under applicable standards in 9.2, the customer must apply for a refund online at *www.usps.com/domestic-claims.*

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.5.2 Claims Filed by Mail

[Revise the first sentence of 1.5.2 to read as follows:]

Customers may file a claim by completing a Form 1000 and mailing the original copy to the address indicated on the form, accompanied by proof of value. * * *

* * * * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

* * * Examples of acceptable evidence are:

* * * * *

[Revise the second sentence of 3.1 item d to read as follows:]

d. * * * The printout must identify the USPS Tracking number of the insured parcel, total postage paid, insurance fee paid, declared value (if applicable), mailing date, origin ZIP Code, and delivery ZIP Code.

* * * * *

3.2 Proof of Value

* * * Examples are:

[Revise 3.2 item a to read as follows:]

a. A sales receipt, paid invoice or bill of sale, or statement of value from a reputable dealer.

[Delete current 3.2 items b and c in their entirety; then, renumber current items d through h as new items b through f.]

* * * * *

4.0 Claims

4.1 Payable Claim

[Revise the introductory text of 4.1 to read as follows:]

Insurance for loss or damage to insured, COD, or Registered Mail within the amount covered by the fee paid, or the indemnity limits for Priority Mail, or Priority Mail Express (under 4.2), is payable for the following:

[Revise 4.1 item a to read as follows:]

a. Article's actual value when mailed.

* * * * *

[Revise 4.1 item k to read as follows:]

k. Cost of bees, crickets, or baby poultry destroyed by *physical* damage to the package, otherwise, the USPS is not presumed to be at fault.

[Delete 4.1 items l and m in their entirety; then, renumber current items n through q as new l through o.]

* * * * *

[Revise newly renumbered item n to read as follows:]

n. For firearms mailed by licensed firearm dealers (under 601.8.0 and Publication 52), 4, a Form 1508 must be submitted with the claim.

[Revise newly renumbered item o to read as follows:]

o. For collectible items, a sales receipt, paid invoice or bill of sale, or statement of value from a reputable dealer (*i.e.,* a licensed business owner who is qualified to estimate value or cost of repairs for the item) must be provided as described in 3.2a.

4.2 Payable Priority Mail Express Claim

In addition to the payable claims in 4.1, the following are payable for Priority Mail Express mailpieces:

[Revise the second sentence of 4.2 item a to read as follows:]

a. * * * Coverage is limited to $100 per mailpiece, subject to a maximum limit per occurrence as provided in 4.2a.4. * * *

* * * * *

4.3 Nonpayable Claims

[Revise the introductory text of 4.3 to read as follows:]

Indemnity is not paid for insured mail (including Priority Mail Express and Priority Mail), Registered Mail, COD, or Priority Mail and Priority Mail Express in these situations:

* * * * *

[Revise 4.3 item d to read as follows:]

d. Requested replacement value exceeded article's actual value when mailed.

* * * * *

[Revise 4.3 item f to read as follows:]

f. Loss resulting from delay of the mail, except under 4.2a.2 and 4.3ad.

* * * * *

[Revise 4.3 item h to read as follows:]

h. Perishable contents frozen, melted, spoiled, or deteriorated.

* * * * *

[Revise 4.3 item k to read as follows:]

k. Death of honeybees, crickets, and harmless live animals not the fault of the USPS (mailability is subject to standards under 601.8.4 and Publication 52, Chapter 5).

* * * * *

[Revise 4.3 item r to read as follows:]

r. Consequential loss of Priority Mail Express claimed, except under 4.2a.3 and 4.3ad.

* * * * *

5.0 Compensation

5.1 Payment Limit

[Revise the first sentence of 5.1 to read as follows:]

The USPS does not make payment for more than the article's actual value when mailed or, for bulk insurance, for more than the wholesale cost of the contents to the sender if a lesser amount. * * *

* * * * *

5.4 Loss

[Revise the title and text of 5.4 to read as follows:]

If the insured, registered, or COD article is lost the payment includes an additional amount for the postage (not fee) paid by the sender. Postage for Priority Mail Express is refunded under 604.9.5.

* * * * *

6.0 Adjudication of Claims

* * * * *

6.3 Final USPS Decision of Claims

[Revise the text of 6.3 to read as follows:]

If Accounting Services sustains the denial of a claim, the customer may submit an additional appeal within 30 days for final review and decision at *www.usps.com/insuranceclaims/online.htm*. Customers who did not file their claim online must send a written appeal to the Consumer Advocate (see 608.8.0 for address).

* * * * *

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

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8.0 Preparing Pallets

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8.10 Pallet Presort and Labeling

* * * * *

8.10.2 Periodicals—Bundles, Sacks, or Trays

* * * Prepare pallets in the following sequence:

* * * * *

[Revise the text of 8.10.2 item b to read as follows:]

b. *5-digit scheme carrier routes, required,* allowed with no minimum, permitted for bundles only. Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 8.10.2e. Labeling:

1. Line 1: L001.

2. Line 2: ''PER'' or ''NEWS,'' as applicable; followed by ''FLTS'' or ''IRREG,'' as applicable; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''SCHEME'' (or ''SCH'').

* * * * *

e. 5-digit carrier routes, required, except for trays; permitted for bundles, sacks, and trays. Allowed with no weight minimum for bundles. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

* * * * *

8.10.3 Standard Mail or Parcel Select Lightweight-Bundles, Sacks, or Trays

* * * Preparation sequence and labeling:

a. 5-digit scheme carrier routes, required, allowed with no minimum, permitted for bundles of flats only. Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. Labeling:

1. Line 1: L001.

2. ''STD'' followed by ''FLTS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''SCHEME'' (or ''SCH'').

b. 5-digit carrier routes, required except for trays, permitted for bundles, sacks, trays, and cartons. Allowed with no weight minimum for bundles. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

1. Line 1: City, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: For flats and Marketing parcels (Product Samples only), ''STD FLTS'' or ''STD MKTG,'' as applicable; followed by ''CARRIER ROUTES'' (or ''CR–RTS''). For letters, ''STD LTRS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''BC'' if pallet contains barcoded letters; followed by ''MACH'' if pallet contains machinable letters; followed by ''MAN'' if pallet contains nonmachinable letters.

[Revise heading of 14.0 to read as follows:]

14.0 FSS Scheme Preparation

[Revise the entire text of 14.1 to read as follows:]

14.1 General

All presorted and basic carrier route Standard Mail, presorted and carrier route Bound Printed Matter (BPM), and Periodicals flats meeting the standards in 201 must be sorted to FSS schemes, properly bundled and placed on or in pallets, trays, sacks, or approved alternate containers, for FSS scheme ZIP Code combinations within the same facility. Mailings that include 10 or more pieces of Standard Mail flats, 6 or more pieces of Periodicals flats, or 10 or more pieces (or 10 or more pounds) of BPM flats to an FSS scheme must be prepared in FSS scheme bundles. The Postal Service also recommends the use of authorized flat trays in lieu of sacks for FSS bundles. FSS scheme bundles that are not required to be placed in a FSS scheme or FSS facility container are combined with bundles of non-FSS sorted bundles and placed on an applicable SCF, 3-digit or NDC container. Mailers must prepare FSS scheme qualifying mailpieces for each individual FSS scheme combination, and then prepare bundles of uniform size from those pieces. Mailings (excluding saturation mailings of Standard Mail or Periodicals flats) with nonpresorted BPM flats may be included in FSS preparation, but will not be eligible for presorted, FSS scheme, FSS scheme container, FSS facility container or carrier route prices. Mailpieces and bundles must also be prepared as follows:

a. Bundles for all FSS schemes must be identified as an FSS scheme presort with an optional endorsement line under 708.7.0, or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

b. It is recommended that all pieces placed into an FSS scheme bundle be barcoded, and bear an accurate delivery point Intelligent Mail barcode with an accurate 11-digit routing code.

c. All FSS scheme bundles must be prepared in bundles with a 3-inch minimum and a 6.5-inch maximum height. ''Leveling'' (adjusting bundle heights within an FSS Scheme to avoid overflow bundles) of the bundles within each scheme is encouraged. Bundles must be placed on or in sacks, trays, pallets or alternate authorized container to form layers of consistent thickness; bundles of uneven thickness must be counter-stacked on pallets or approved alternate container in accordance with 8.5.8. Except for one overflow bundle that may be under the minimum size, all bundles within each FSS scheme must be of uniform size.

d. Pallets must be prepared under 8.0 and labeled under 8.6, with a pallet placard bearing an Intelligent Mail container barcode as described in 708.6.4.

e. An FSS scheme pallet, or approved alternate container, must be made when 250 pounds or more of bundles are available for an individual FSS scheme. Bundles remaining after palletization may be placed in sacks (or flat trays if approved) or approved alternate container.

f. FSS scheme bundles for multiple schemes processed at one facility according to column C, L006 may be combined on an FSS facility pallet or approved alternate container if quantities are less than 250 pounds.

g. Sacks and trays containing flat-size pieces prepared under FSS schemes must meet the applicable sacking standards in 14.2, 14.3, and 14.4 and be labeled with Intelligent Mail tray or sack label under 708.6.

14.2 Periodicals

14.2.1 Basic Standards

[Revise the entire text of 14.2.1 to read as follows:]

All Periodicals flats meeting the standards in 201 (nonmachinable flats up to ¾ inch thick may be included if they meet the standards in 705.14) and destinating to FSS sites as shown in L006 must be prepared according to these standards. Mailings of In-County Periodicals flats and the associated Outside-County Periodicals flats mailings of 5,000 pieces or less may be prepared according to these standards. Periodicals are subject to the following:

a. Pricing eligibility is based on 207.11.0 through 207.14.0. All Periodicals flats prepared under these standards will be assessed the FSS scheme price. FSS bundles placed on FSS scheme or FSS facility pallets, sacks, trays, or approved alternate container will claim the FSS scheme bundle price.

b. FSS scheme pallets will be assessed the FSS scheme Pallet price. FSS facility sort level pallets will be charged an FSS Facility Pallet container price. FSS scheme sacks or trays will be assessed the FSS scheme Sack/Tray price. Pallets, sacks and trays entered at a DFSS will claim the DFSS entry price.

c. The Outside-County pound price will be DFSS price. The Inside-County price will claim prices for the ''None'' entry level.

d. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for FSS prices in accordance with 207.14.0 and 207.25.0.

e. Each bundle must be identified with a ''SCH 5–DIGIT FSS'' optional endorsement line in accordance with Exhibit 708.7.1.1, or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

f. All FSS schemed Periodicals mailpieces prepared on FSS scheme pallets must be prepared in uniform size bundles, between 3 inches and 6.5 inches in height and secured under 203.3.0, except that one overflow bundle per mailpiece pool may be under the minimum size. All Periodicals FSS scheme mailpieces must meet the standards in 705.14.0.

14.2.2 Pallet Preparation and Labeling

[Revise the second and third sentences of the introductory text of 14.2.2 to read as follows:]

* * * Residual bundles may be included with non-FSS bundles and

placed directly on 3-digit, SCF, or ADC pallets in accordance with 8.10.2, or placed in sacks or approved alternate containers. Preparation sequence and labeling is as follows:

* * * * *

[Revise 14.2.2b and 14.2.2b1 to read as follows:]

b. *FSS facility,* optional, no minimum, permitted only for FSS scheme bundles prepared for the FSS sort plans processed within the same facility, as shown in L006. Labeling:

1. Line 1: L006, column C.

* * * * *

14.2.3 Sack Preparation and Labeling

[Revise the first sentence of the introductory text of 14.2.3 to read as follows:]

Properly prepared flat-size mailpieces in FSS scheme bundles may be placed in sacks or approved alternate containers when 250 pounds are not available to a presort destination (including DFSS sites). * * * Preparation and labeling:

[Revise 14.2.3 item a to read as follows:]

a. *FSS scheme,* required at 72 pieces, optional at 24 pieces (fewer pieces not permitted), permitted only for FSS scheme bundles prepared for a single FSS scheme, as shown in L006; labeling:

* * * * *

[Revise 14.2.3 item b to read as follows:]

b. *FSS facility,* optional with a minimum of 24 pieces (fewer pieces not permitted), permitted only for FSS bundles prepared for the FSS sort plans processed within the same facility, as shown in L006; labeling:

* * * * *

14.3 Standard Mail

14.3.1 Basic Standards

* * * * *

* * * Standard Mail flats are subject to the following:

[Revise 14.3.1 item b to read as follows:]

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for FSS scheme prices in accordance with 243.

[Delete 14.3.1 item c in its entirety; then, renumber current items d and e as new items c and d; then, and revise renumbered item d to read as follows:]

d. Standard Mail FSS scheme mailpieces must meet all the standards in 705.14.1.

* * * * *

14.3.2 Pallet Preparation and Labeling

* * * Preparation sequence and labeling:

[Revise 14.3.2 item a to read as follows:]

a. *FSS scheme,* required (optional under 250 pounds), no minimum, permitted only for FSS scheme bundles prepared for a single FSS scheme, as shown in L006. Labeling:

* * * * *

[Revise 14.3.2 items b and b1 to read as follows:]

b. *FSS facility,* optional, no minimum, permitted only for FSS scheme bundles prepared for the FSS scheme processed within the same facility, as shown in L006. Labeling:

1. Line 1: L006, column C.

* * * * *

14.3.3 Sack Preparation and Labeling

[Revise the first sentence of the introductory text of 14.3.3 to read as follows:]

Properly prepared flat-size mailpieces in FSS scheme bundles may be placed in sacks or approved alternate containers when 250 pounds are not available to a FSS scheme, L006. * * * Preparation and labeling:

[Revise 14.3.3 item a to read as follows:]

a. *FSS scheme,* required at 125 pieces or 15 pounds, permitted only for FSS scheme bundles prepared for a single FSS scheme, as shown in L006; labeling:

* * * * *

[Revise 14.3.3 item b to read as follows:]

b. *FSS facility,* optional with a minimum of 125 pieces or 15 pounds, permitted only for FSS scheme bundles prepared for the FSS schemes processed within the same facility, as shown in L006; labeling:

* * * * *

14.4 Bound Printed Matter

14.4.1 Basic Standards

[Revise the introductory text of 14.4.1 to read as follows:]

Bound Printed Matter (BPM) flats eligible for, and paid at FSS Scheme prices and that meet the standards in 201, must be prepared in FSS scheme bundles and placed on pallets, or in flat trays, sacks, or approved alternate containers, for delivery to ZIP Codes having FSS processing capability, as shown in L006. BPM flats are subject to the following:

* * * * *

[Revise 14.4.1 item b to read as follows:]

c. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for FSS scheme prices in accordance with 263.

[Revise 14.4.1 item c to read as follows:]

c. Mailers must prepare all eligible flat-size mailpieces into FSS scheme bundles according to L006.

* * * * *

14.4.2 Pallet Preparation and Labeling

* * * Preparation sequence and labeling:

* * * * *

b. *FSS facility sort,* optional, no minimum, permitted only for FSS bundles prepared for the FSS schemes processed within the same facility, as shown in L006. Labeling:

[Revise 14.4.2 item b1 to read as follows]

1. Line 1: L006, Column C.

* * * * *

14.4.3 Sack Preparation and Labeling

[Revise the introductory text of 14.4.3 to read as follows:]

Properly prepared flat-size mailpieces in FSS scheme bundles may be placed in trays, sacks, or approved alternate containers when 250 pounds are not available to an FSS scheme. FSS scheme bundles may be placed in mixed NDC sacks or alternate containers, or combined with non-FSS bundles and placed in 3-digit, SCF, ADC, and mixed ADC sacks or alternate containers. Preparation and labeling:

[Revise 14.4.3 item a to read as follows:]

a. FSS *scheme,* required at 20 pieces, permitted only for FSS scheme bundles prepared for a single FSS scheme, as shown in L006; labeling:

* * * * *

[Revise the text of 14.4.3b as follows:]

b. *FSS facility sort,* optional with a minimum of 20 pieces, permitted only for FSS scheme bundles prepared for the FSS schemes processed within the same facility, as shown in L006.

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.2 General Eligibility Standards

[Revise the introductory text of 23.2 to read as follows:]

First-Class Mail, Periodicals, and Standard Mail letters and flats meeting eligibility requirements for automation or carrier route prices (except for Standard Mail ECR saturation flats), and Bound Printed Matter presorted or carrier route barcoded flats, are potentially eligible for full-service incentives. All pieces entered under full service pricing must:

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

For First-Class Mail, Periodicals, Standard Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

c. For mail in trays or sacks, list these required elements:

[Insert a new second sentence in the text of 1.2c item 4 to read as follows:]

* * * * *

4. * * * For pieces prepared in FSS scheme bundles, list by 5-digit ZIP Code within each bundle. * * *

* * * * *

1.3 Price Level Column Headings

The actual name of the price level (or abbreviation) is used for column headings required by 1.2 and shown below:

a. Automation First-Class Mail, Standard Mail, and barcoded Periodicals:

[Revise the table in 1.3 item a to read as follows:]

Price	Abbreviation
FSS [Periodicals flats, Standard Mail flats] 5-Digit [First-Class Mail letters and flats, Periodicals letters and flats, and Standard Mail letters and flats].	SB 5B
3-Digit [First-Class Mail letters and flats, Periodicals letters and flats, and Standard Mail letters and flats].	3B
AADC [First-Class Mail, Periodicals, and Standard Mail letters].	AB
ADC [First-Class Mail, Periodicals, and Standard Mail Flats].	AB
Mixed AADC [First-Class Mail, Periodicals, and Standard Mail letters].	MB
Mixed ADC [First-Class Mail, Periodicals, and Standard Mail flats].	MB
Basic [In-County Periodicals]	BB
Firm [Outside-County Periodicals].	FB

b. Presorted First-Class Mail, barcoded and nonbarcoded Periodicals flats, nonbarcoded Periodicals letters, and machinable and nonmachinable Standard Mail:

[Revise the table in 1.3 item b to read as follows:]

Price	Abbreviation
Presorted [First-Class Mail letters/cards, flats, and parcels].	Presort
5-Digit [First-Class Mail parcels, all Standard Mail, and Periodicals letters].	5D
FSS [Periodicals flats, Standard Mail flats].	SB
3-Digit [First-Class Mail parcels, all Standard Mail and Periodicals letters].	3D
SCF [for Standard Mail parcels].	SCF
AADC [Standard Mail machinable letters].	AB
ADC [First-Class Mail parcels, First-Class Mail Package Service parcels, Standard Mail nonmachinable letters, flats, and irregular parcels and all Periodicals].	AD
Basic [In-County Periodicals]	BS
Mixed AADC [Standard Mail machinable letters].	MB
Mixed ADC [Standard Mail nonmachinable letters, flats, irregular parcels; and all Periodicals].	MD
Mixed ADC [First-Class Mail parcels].	SP
NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	NDC
Mixed NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	MNDC
Firm [Outside-County Periodicals].	FB

c. Carrier Route Periodicals and Enhanced Carrier Route Standard Mail:

* * * * *

1.4 Sortation Level

The actual sortation level (or corresponding abbreviation) is used for the bundle, tray, sack, or pallet levels required by 1.2 and shown below:

[Revise the table in 1.4 to read as follows:]

Sortation level	Abbreviation
Carrier Route	CRD
5-Digit Carrier Routes	CR5
5-Digit Scheme Carrier Routes [sacks and pallets, Periodicals flats and irregular parcels, Standard Mail flats].	CR5S
5-Digit Scheme [barcoded and machinable letters].	5DGS
5-Digit Scheme [pallets, Periodicals flats and irregular parcels, Standard Mail flats, Bound Printed Matter flats].	5DGS
Merged 5-Digit [sacks and pallets, Periodicals flats and irregular parcels, Standard Mail flats].	M5D
Merged 5-Digit Scheme [sacks and pallets, Periodicals flats and irregular parcels, Standard Mail flats].	M5DS
5-Digit FSS Scheme [bundle, tray, sack or other approved container, Periodicals flats, Standard Mail flats, Bound Printed Matter flats]].	5DG FSS
3-Digit Carrier Routes	CR3
3-Digit Scheme [barcoded letters, barcoded and co-bundled flats].	3DGS
Merged 3-Digit [sacks, Periodicals flats and irregular parcels].	M3D
3-Digit	3DG
ADC	ADC
ADC [pallets created from bundle reallocation].	PADC
AADC	AADC
Mixed ADC	MADC
Origin Mixed ADC	OMX
Mixed AADC	MAAD
SCF [sacks and pallets, Periodicals flats, Bound Printed Matter, Standard Mail irregular parcels less than 6 ounces].	SCF
SCF [pallets created from bundle reallocation].	PSCF
NDC	NDC
ASF	ASF
NDC [pallets created from bundle reallocation].	PNDC
Mixed NDC [working]	MNDC

* * * * *

1.6 Detailed Zone Listing for Periodicals

1.6.1 Definition and Retention

[Revise the first sentence of 1.6.1 to read as follows:]

The publisher must be able to present documentation to support the number of copies of each edition of an issue, by entry point, mailed to each zone, and at DDU, DFSS, DSCF, DADC, DNDC, and In-County prices.* * *

* * * * *

1.6.3 Zone Abbreviations

Use the actual price name or the authorized zone abbreviation in the listings in 1.0 and 207.17.4.2:

[Revise the table in 1.6.3 to read as follows:]

Zone abbreviation	Rate equivalent
ICD	In-County, DDU
IC	In-County, Others
DDU	Outside-County, DDU

Zone abbreviation	Rate equivalent
FSS	Outside-County, DFSS
SCF	Outside-County, DSCF
ADC	Outside-County, DADC
1–2 or 1/2	zones 1 and 2
3, 4, 5, 6, 7, 8 (as applicable)	zones 3 through 8 (as applicable)
M	mixed zones

* * * * *

1.7.2 Outside-County Container Report

The container report must contain, at a minimum, the following elements:

* * * * *

[Revise 1.7.2 item d to read as follows:]

d. Container entry level (origin, DDU, DFSS, DSCF, DADC, or DNDC).

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.4 3-Digit Content Identifier Numbers

* * * See Exhibit 6.2.4.

Exhibit 6.2.4 3-Digit Content Identifier Numbers

[Update Exhibit 6.2.4, 3-Digit Content Identifier Numbers, to read *as follows:]*

Class and mailing	CIN	Human-readable content line
Priority Mail Express Open and Distribute		
* * * * *	*	*
Priority Mail Open and Distribute		
* * * * *	*	*
First-Class Package Service, Parcels		
* * * * *	*	*
All Other Classes, Parcels		
* * * * *	*	*
First-Class Mail		
FCM Letters—Automation		
* * * * *	*	*
FCM Letters—Nonautomation Machinable		
* * * * *	*	*
FCM Letters—Presorted Nonmachinable		
* * * * *	*	*
FCM Letters—Single-Piece		
* * * * *	*	*
FCM Flats—Automation		
* * * * *	*	*
FCM Flats—Presorted		
* * * * *	*	*
FCM Flats—Co-trayed Automation and Presorted		
* * * * *	*	*
FCM Flats—Single-Piece		
* * * * *	*	*
FC Parcels—Presorted		
* * * * *	*	*
Periodicals (PER)		
PER Letters—Carrier Route		

Class and mailing	CIN	Human-readable content line
* * * * * * *	*	*
PER Letters—Barcoded (Automation)		
* * * * * * *	*	*
PER Letters—Nonbarcoded (Nonautomation)		
* * * * * * *	*	*
PER Flats—Carrier Route		
* * * * * * *	*	*
PER Flats—Barcoded		
* * * * * * *	*	*
PER Flats—Nonbarcoded		
* * * * * * *	*	*
PER Flats—Co-sacked Barcoded and Nonbarcoded		
* * * * * * *	*	*
PER Flats—Merged Carrier Route, Barcoded, and Nonbarcoded		
merged 5-digit sacks	339	PER FLTS CR/5D.
merged 5-digit scheme sacks	349	PER FLTS CR/5D SCH.
FSS scheme	707	PER FLTS 5D FSS SCH BC.
FSS facility	703	PER FLTS 5D FSS FAC BC.
merged 3-digit sacks	352	PER FLTS CR/5D/3D.
PER Irregular Parcels—Merged Carrier Route and Presorted		
* * * * * * *	*	*
PER Irregular Parcels—Carrier Route		
* * * * * * *	*	*
PER Irregular Parcels—Presorted		
* * * * * * *	*	*
Periodicals (NEWS)		
NEWS Letters—Carrier Route		
* * * * * * *	*	*
NEWS Letters—Barcoded (Automation)		
* * * * * * *	*	*
NEWS Letters—Nonbarcoded (Nonautomation)		
* * * * * * *	*	*
NEWS Flats—Carrier Route		
* * * * * * *	*	*
NEWS Flats—Barcoded		
* * * * * * *	*	*
NEWS Flats—Nonbarcoded		
* * * * * * *	*	*
NEWS Flats—Co-sacked Barcoded and Nonbarcoded		
* * * * * * *	*	*
NEWS Flats—Merged Carrier Route, Barcoded, and Nonbarcoded		
merged 5-digit	439	NEWS FLTS CR/5D.
merged 5-digit scheme	449	NEWS FLTS CR/5D SCH.
FSS scheme	708	NEWS FLTS 5D FSS SCH.
FSS facility	704	BC NEWS FLTS 5D FSS FAC.
merged 3-digit sacks	452	BC NEWS FLTS CR/5D/3D.
Regular Parcels—Merged Carrier Route and Presorted		

Class and mailing	CIN	Human-readable content line
* * * * * * *	*	*
NEWS Irregular Parcels—Carrier Route		
* * * * * * *	*	*
NEWS Irregular Parcels—Presorted		
* * * * * * *	*	*
Standard Mail		
ECR Letters—Barcoded		
* * * * * * *	*	*
ECR Letters—Nonautomation (Machinable)		
* * * * * * *	*	*
ECR Letters—Nonautomation (Nonmachinable)		
* * * * * * *	*	*
STD Letters—Automation		
* * * * * * *	*	*
STD Letters—Nonautomation Machinable		
* * * * * * *	*	*
STD Letters—Presorted Nonmachinable		
* * * * * * *	*	*
STD Letters—Residual Pieces Subject to FCM Single-Piece Prices		
* * * * * * *	*	*
Enhanced Carrier Route Flats—Nonautomation		
* * * * * * *	*	*
STD Flats—Co-sacked Automation and Nonautomation		
* * * * * * *	*	*
STD Flats—Merged Carrier Route, Automation, and Presorted		
merged 5-digit	539	STD FLTS CR/5D.
merged 5-digit scheme	549	STD FLTS CR/5D SCH.
FSS scheme	709	STD FLTS 5D FSS SCH BC.
FSS facility	705	STD FLTS 5D FSS FAC BC.
STD Flats—Automation		
* * * * * * *	*	*
STD Flats—Nonautomation		
* * * * * * *	*	*
STD Flats—Residual Pieces Subject to FCM Single-Piece Prices		
* * * * * * *	*	*
Customized MarketMail (CMM)		
* * * * * * *	*	*
ECR Marketing Parcels		
* * * * * * *	*	*
STD Marketing Parcels Less Than 6 oz. and Irregular Parcels		
* * * * * * *	*	*
STD Marketing Parcels 6 oz. or More and Machinable Parcels		
* * * * * * *	*	*
STD Machinable and Irregular Parcels—Presorted		

Class and mailing	CIN	Human-readable content line
* * * * * * *	*	*
Package Services		
Carrier Route BPM—Flats		
* * * * * * *	*	*
Presorted BPM—Flats		
* * * * * * *	*	*
Presorted BPM—Automation Flats		
* * * * * * *	*	*
BPM Flats—Co-sacked Barcoded and Presorted		
5-digit scheme sacks	648	PSVC FLTS 5D SCH BC/NBC.
FSS scheme	710	PSVC FLTS 5D FSS SCH.
FSS facility	706	BC PSVC FLTS 5D FSS FAC.
5-digit sacks	648	BC PSVC FLTS 5D BC/NBC.
3-digit sacks	661	PSVC FLTS 3D BC/NBC.
SCF sacks	667	PSVC FLTS SCF BC/NBC.
ADC sacks	668	PSVC FLTS ADC BC/NBC.
mixed ADC sacks	669	PSVC FLTS BC/NBC WKG.
Carrier Route BPM—Irregular Parcels		
* * * * * * *	*	*
Presorted BPM—Irregular Parcels		
* * * * * * *	*	*
Carrier Route BPM—Machinable Parcels		
* * * * * * *	*	*
Presorted BPM—Machinable Parcels		
* * * * * * *	*	*
Media Mail and Library Mail Flats—Presorted		
* * * * * * *	*	*
Media Mail and Library Mail Irregular Parcels—Presorted		
* * * * * * *	*	*
Media Mail and Library Mail Machinable Parcels—Presorted		
* * * * * * *	*	*
Parcel Select		
Parcel Select Machinable Parcels		
* * * * * * *	*	*
Parcel Select DSCF and DDU Prices		
* * * * * * *	*	*
Parcel Select—Irregular (Nonmachinable) Parcels		
* * * * * * *	*	*
Parcel Select Lightweight Machinable Parcels		
* * * * * * *	*	*
Parcel Select Lightweight Irregular Parcels		
* * * * * * *	*	*
Combined Package Services and Parcel Select Parcels		
* * * * * * *	*	*
Combined Package Services, Parcel Select, and Standard Machinable Parcels		
* * * * * * *	*	*
Combined Package Services, Parcel Select, and Standard—All Parcels		

Class and mailing	CIN	Human-readable content line
* * * * *	*	*
Combined Package Services, Parcel Select, and Standard—Irregular Parcels 2 up to 6 oz. (APPS-Machinable)		
* * * * *	*	*
Combined PSVC & STD—Irregular Parcels Less Than 2 oz., and Tubes and Rolls (Not APPS-Machinable)		
* * * * *	*	*

We will publish appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Requirements.

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