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**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

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

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 250

### Personnel Management in Agencies

**AGENCY:** Office of Personnel Management.

**ACTION:** Correcting amendment.

**SUMMARY:** On December 12, 2016, the Office of Personnel Management (OPM) published revisions to its regulations concerning personnel management in agencies. That document inadvertently failed to properly cite agencies covered by the Chief Financial Officers Act. This document corrects the final regulations.

**DATES:** Effective November 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** For information, please contact Jan Chisolm-King by email at *janet.chisolm-king@opm.gov* or by telephone at (202) 606–1958.

**SUPPLEMENTARY INFORMATION:** OPM maintains statutory responsibility under 5 U.S.C. 1103(c) to guide, enable, and assess agency strategic human capital management processes. On December 12, 2016, OPM published the *Personnel Management in Agencies* final rule in the **Federal Register** (81 FR 89357) to amend 5 CFR 250, subpart B, *Strategic Human Capital Management.* This document corrects an incorrect cite reference contained in § 250.201 (Coverage and Purpose).

**List of Subjects in 5 CFR Part 250**

Authority for Personnel actions in agencies, Strategic Human Capital Management.

Accordingly, 5 CFR 250, subpart B, is corrected by making the following correcting amendment:

## PART 250—PERSONNEL MANAGEMENT IN AGENCIES

■ 1. The authority citation for part 250 continues to read as follows:

**Authority:** 5 U.S.C. 1101 note, 1103(a)(5), 1103(c), 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002).

■ 2. Revise § 250.201 to read as follows:

**§ 250.201 Coverage and purpose.**

Pursuant to 5 U.S.C. 1103(c), this subpart defines a set of systems, including standards and metrics, for assessing the management of human capital by Federal agencies. These regulations apply to agencies covered by 31 U.S.C. 901(b) of the Chief Financial Officers (CFO) Act of 1990 (Pub. L. 101–576), as well as 5 U.S.C. 1401 and support the performance planning and reporting that is required by sections 1115(a)(3) and (f) and 1116(d)(5) of title 31, United States Code.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2018–24501 Filed 11–8–18; 8:45 am]

**BILLING CODE 6325–39–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 906

**[Doc. No. AMS–SC–18–0044; SC18–906–1 FR]**

### Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Texas Valley Citrus Committee (Committee) to decrease the assessment rate established for the 2018–19 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective December 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Part 906, referred to as ''the Order,'' is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of oranges and grapefruit operating within the production area.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Texas citrus handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable oranges and grapefruit for the 2018–19 crop year and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

This rule decreases the assessment rate from $0.02, the rate that was established for the 2017–18 and subsequent fiscal periods, to $0.01 per 7/10-bushel carton or equivalent of oranges and grapefruit handled for the 2018–19 and subsequent fiscal periods. The Committee recommended decreasing the assessment rate and utilizing funds from its authorized reserve to reduce the reserve balance. The reserve balance has been greater than the sum allowable under § 906.35 of the Order, which is approximately equivalent to one year's operating expenses, since 2017. In 2017–18, the Committee was able to reduce its budget by more than $595,000 when an alternative funding source was found for the Mexican fruit fly control program. This dramatic reduction in the overall budget prompted the Committee's need to reduce the balance of the authorized reserve to reflect the lower operating budget.

The Committee met on May 23, 2018, and unanimously recommended 2018–19 expenditures of $152,920 and an assessment rate of $0.01 per 7/10-bushel carton or equivalent of oranges and grapefruit. The itemized budgeted expenses, including $79,220 for management, $50,000 for compliance, and $23,700 for operating expenses, are the same as the previous fiscal period. However, the assessment rate of $0.01 is lower than the $0.02 rate currently in effect.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of 7.5 million 7/10-bushel cartons, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $75,000 (7.5 million × $0.01), along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of $152,920. Funds in the reserve are estimated to be $287,295 at the end of the 2017–18 fiscal period. No additional funds can be added to the reserve until the balance drops below approximately one fiscal period's expenses as stated in § 906.35.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2018–19 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to Committee data, the average price for Texas citrus during the 2016–17 season was approximately $16 per carton and total shipments were 7.6 million cartons. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of greater than $7,500,000 ($16 per carton times 7.6 million cartons equals $121.6 million, divided by 13 equals $9.4 million per handler).

In addition, based on National Agricultural Statistics Service information, the weighted grower price for Texas citrus during the 2016–17 season was approximately $9.35 per carton. Using the weighted average price and shipment information, the number of producers and assuming a normal distribution, the majority of producers would have annual receipts of $418,000, which is less than $750,000 ($9.35 per carton times 7.6 million cartons equals $71.06 million, divided by 170 equals $418,000 per producer). Thus, the majority of handlers of Texas citrus may be classified as large entities, while the majority of producers may be classified as small entities.

This rule decreases the assessment rate collected from handlers for the 2018–19 and subsequent fiscal periods from $0.02 to $0.01 per 7/10-bushel carton or equivalent of Texas citrus. The Committee unanimously recommended 2018–19 expenditures of $152,920 and an assessment rate of $0.01 per 7/10-bushel carton or equivalent handled. The assessment rate of $0.01 is $0.01 lower than the 2017–18 rate. The quantity of assessable oranges and grapefruit for the 2018–19 fiscal period is estimated at 7.5 million 7/10-bushel cartons. The $0.01 rate should provide $75,000 in assessment income (7.5 million × $0.01). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2018–19 year include $79,220 for management, $50,000 for compliance,

and $23,700 for operating expenses. Budgeted expenses for these items in 2017–18 were the same.

The Committee recommended decreasing the assessment rate and utilizing funds from its authorized reserve to reduce the reserve balance to bring it in line with the limitation under the Order of approximately one year's expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee, and the Research Committee. Alternative expenditure levels were discussed by these committees who reviewed the relative value of various activities to the Texas citrus industry. These committees determined that all program activities were adequately funded and essential to the functionality of the Order; thus, no alternative expenditure levels were deemed appropriate. Additionally, the Committee discussed alternatives of maintaining the current assessment rate of $0.02 and lowering the assessment rate to $0.015 per 7/10-bushel carton or equivalent. These alternatives were not recommended because the Committee determined that these assessment rates would not draw enough funds from the authorized reserve to bring the reserve fund total in line with Order requirements.

Based on these discussions and estimated shipments, the recommended assessment rate of $0.01 should provide $75,000 in assessment income. The Committee determined that assessment revenue, along with funds from the reserve and interest income, should be adequate to cover budgeted expenses for the 2018–19 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2018–19 season should be approximately $9.50 per 7/10-bushel carton or equivalent of oranges and grapefruit. The estimated assessment revenue for the 2018–19 crop year as a percentage of total grower revenue would be about 0.1 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. Decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the Texas citrus industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 23, 2018, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements because of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 24, 2018 (83 FR 42805). Copies of the proposed rule were also mailed or sent via facsimile to all Texas citrus handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 24, 2018, was provided for interested persons to respond to the proposal.

One comment was received. The commenter expressed concern that the beginning of the applicable timeframe for the new assessment rate precedes the closing date for public comments. The Order requires that the rate of assessment for each fiscal period apply to all assessable Texas citrus handled during such fiscal period. Further, the rulemaking process is designed to provide interested parties with the opportunity to comment on actions being considered by USDA. All comments timely received were considered prior to the finalization of this rule. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 906**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 906.235 is revised to read as follows:

### § 906.235 Assessment rate.

On and after August 1, 2018, an assessment rate of $0.01 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: November 5, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018–24493 Filed 11–8–18; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 208**

**RIN 1615–AC34**

**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Parts 1003 and 1208**

**[EOIR Docket No. 18–0501; A.G. Order No. 4327–2018]**

**RIN 1125–AA89**

## Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The Department of Justice and the Department of Homeland Security (''DOJ,'' ''DHS,'' or, collectively, ''the Departments'') are adopting an interim final rule governing asylum claims in the context of aliens who are subject to, but contravene, a suspension or limitation on entry into the United States through the southern border with Mexico that is imposed by a presidential proclamation or other presidential order (''a proclamation'') under section 212(f) or 215(a)(1) of the Immigration and Nationality Act (''INA''). Pursuant to statutory authority, the Departments are amending their respective existing regulations to provide that aliens subject to such a proclamation concerning the southern border, but who contravene such a proclamation by entering the United States after the effective date of such a proclamation, are ineligible for asylum. The interim rule, if applied to a proclamation suspending the entry of aliens who cross the southern border unlawfully, would bar such aliens from eligibility for asylum and thereby channel inadmissible aliens to ports of entry, where they would be processed in a controlled, orderly, and lawful manner. This rule would apply only prospectively to a proclamation issued after the effective date of this rule. It would not apply to a proclamation that specifically includes an exception for aliens applying for asylum, nor would it apply to aliens subject to a waiver or exception provided by the proclamation. DHS is amending its regulations to specify a screening process for aliens who are subject to this specific bar to asylum eligibility. DOJ is amending its regulations with respect to such aliens. The regulations would ensure that aliens in this category who establish a reasonable fear of persecution or torture could seek withholding of removal under the INA or protection from removal under regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT'').

**DATES:**

*Effective date:* This rule is effective November 9, 2018.

*Submission of public comments:* Written or electronic comments must be submitted on or before January 8, 2019. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight eastern standard time at the end of that day.

**ADDRESSES:** You may submit comments, identified by EOIR Docket No. 18–0501, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18–0501 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305–0289 (not a toll-free call).

**FOR FURTHER INFORMATION CONTACT:** Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305–0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Departments also invite comments that relate to the economic or federalism effects that might result from this rule. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that supports the recommended change.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 18–0501. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information of which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information of which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the public docket file of DOJ's Executive Office of Immigration Review (''EOIR''), but not posted online. To inspect the public docket file in person, you must make an appointment with EOIR. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the contact information specific to this rule.

### II. Purpose of This Interim Final Rule

This interim final rule (''interim rule'' or ''rule'') governs eligibility for asylum and screening procedures for aliens subject to a presidential proclamation or order restricting entry issued pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), or section 215(a)(1) of the INA, 8 U.S.C. 1185(a)(1), that concerns entry to the United States along the southern border with Mexico and is issued on or after the effective date of this rule. Pursuant to statutory authority, the interim rule renders such aliens ineligible for asylum if they enter the United States after the effective date of

such a proclamation, become subject to the proclamation, and enter the United States in violation of the suspension or limitation of entry established by the proclamation. The interim rule, if applied to a proclamation suspending the entry of aliens who cross the southern border unlawfully, would bar such aliens from eligibility for asylum and thereby channel inadmissible aliens to ports of entry, where such aliens could seek to enter and would be processed in an orderly and controlled manner. Aliens who enter prior to the effective date of an applicable proclamation will not be subject to this asylum eligibility bar unless they depart and reenter while the proclamation remains in effect. Aliens also will not be subject to this eligibility bar if they fall within an exception or waiver within the proclamation that makes the suspension or limitation of entry in the proclamation inapplicable to them, or if the proclamation provides that it does not affect eligibility for asylum.

As discussed further below, asylum is a discretionary immigration benefit. In general, aliens may apply for asylum if they are physically present or arrive in the United States, irrespective of their status and irrespective of whether or not they arrive at a port of entry, as provided in section 208(a) of the INA, 8 U.S.C. 1158(a). Congress, however, provided that certain categories of aliens could not receive asylum and further delegated to the Attorney General and the Secretary of Homeland Security (''Secretary'') the authority to promulgate regulations establishing additional bars on eligibility that are consistent with the asylum statute and ''any other conditions or limitations on the consideration of an application for asylum'' that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B).

In the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, Congress, concerned with rampant delays in proceedings to remove illegal aliens, created expedited procedures for removing inadmissible aliens, and authorized the extension of such procedures to aliens who entered illegally and were apprehended within two years of their entry. *See generally* INA 235(b), 8 U.S.C. 1225(b). Those procedures were aimed at facilitating the swift removal of inadmissible aliens, including those who had entered illegally, while also expeditiously resolving any asylum claims. For instance, Congress provided that any alien who asserted a fear of persecution would appear before an asylum officer, and that any alien who is determined to have established a ''credible fear''—meaning a ''significant possibility . . . that the alien could establish eligibility for asylum'' under the asylum statute—would be detained for further consideration of an asylum claim. *See* INA 235(b)(1), (b)(1)(B)(v), 8 U.S.C. 1225(b)(1), (b)(1)(B)(v).

When the expedited procedures were first implemented approximately two decades ago, relatively few aliens within those proceedings asserted an intent to apply for asylum or a fear of persecution. Rather, most aliens found inadmissible at the southern border were single adults who were immediately repatriated to Mexico. Thus, while the overall number of illegal aliens apprehended was far higher than it is today (around 1.6 million in 2000), aliens could be processed and removed more quickly, without requiring detention or lengthy court proceedings.

In recent years, the United States has seen a large increase in the number and proportion of inadmissible aliens subject to expedited removal who assert an intent to apply for asylum or a fear of persecution during that process and are subsequently placed into removal proceedings in immigration court. Most of those aliens unlawfully enter the country between ports of entry along the southern border. Over the past decade, the overall percentage of aliens subject to expedited removal and referred, as part of the initial screening process, for a credible-fear interview jumped from approximately 5% to above 40%, and the total number of credible-fear referrals for interviews increased from about 5,000 a year in Fiscal Year (''FY'') 2008 to about 97,000 in FY 2018. Furthermore, the percentage of cases in which asylum officers found that the alien had established a credible fear—leading to the alien's placement in full immigration proceedings under section 240 of the INA, 8 U.S.C. 1229a—has also increased in recent years. In FY 2008, when asylum officers resolved a referred case with a credible-fear determination, they made a positive finding about 77% of the time. That percentage rose to 80% by FY 2014. In FY 2018, that percentage of positive credible-fear determinations has climbed to about 89% of all cases. After this initial screening process, however, significant proportions of aliens who receive a positive credible-fear determination never file an application for asylum or are ordered removed in absentia. In FY 2018, a total of about 6,000 aliens who passed through credible-fear screening (17% of all completed cases, 27% of all completed cases in which an asylum application was filed, and about 36% of cases where the asylum claim was adjudicated on the merits) established that they should be granted asylum.

Apprehending and processing this growing number of aliens who cross illegally into the United States and invoke asylum procedures thus consumes an ever increasing amount of resources of DHS, which must surveil, apprehend, and process the aliens who enter the country. Congress has also required DHS to detain all aliens during the pendency of their credible-fear proceedings, which can take days or weeks. And DOJ must also dedicate substantial resources: Its immigration judges adjudicate aliens' claims, and its officials are responsible for prosecuting and maintaining custody over those who violate the criminal law. The strains on the Departments are particularly acute with respect to the rising numbers of family units, who generally cannot be detained if they are found to have a credible fear, due to a combination of resource constraints and the manner in which the terms of the Settlement Agreement in *Flores* v. *Reno* have been interpreted by courts. *See* Stipulated Settlement Agreement, *Flores* v. *Reno,* No. 85–cv–4544 (N.D. Cal. Jan. 17, 1997).

In recent weeks, United States officials have each day encountered an average of approximately 2,000 inadmissible aliens at the southern border. At the same time, large caravans of thousands of aliens, primarily from Central America, are attempting to make their way to the United States, with the apparent intent of seeking asylum after entering the United States unlawfully or without proper documentation. Central American nationals represent a majority of aliens who enter the United States unlawfully, and are also disproportionately likely to choose to enter illegally between ports of entry rather than presenting themselves at a port of entry. As discussed below, aliens who enter unlawfully between ports of entry along the southern border, as opposed to at a port of entry, pose a greater strain on DHS's already stretched detention and processing resources and also engage in conduct that seriously endangers themselves, any children traveling with them, and the U.S. Customs and Border Protection (''CBP'') agents who seek to apprehend them.

The United States has been engaged in sustained diplomatic negotiations with Mexico and the Northern Triangle countries (Honduras, El Salvador, and Guatemala) regarding the situation on the southern border, but those negotiations have, to date, proved

unable to meaningfully improve the situation.

The purpose of this rule is to limit aliens' eligibility for asylum if they enter in contravention of a proclamation suspending or restricting their entry along the southern border. Such aliens would contravene a measure that the President has determined to be in the national interest. For instance, a proclamation restricting the entry of inadmissible aliens who enter unlawfully between ports of entry would reflect a determination that this particular category of aliens necessitates a response that would supplement existing prohibitions on entry for all inadmissible aliens. Such a proclamation would encourage such aliens to seek admission and indicate an intention to apply for asylum at ports of entry. Aliens who enter in violation of that proclamation would not be eligible for asylum. They would, however, remain eligible for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or for protections under the regulations issued under the authority of the implementing legislation regarding Article 3 of the CAT.

The Departments anticipate that a large number of aliens who would be subject to a proclamation-based ineligibility bar would be subject to expedited-removal proceedings. Accordingly, this rule ensures that asylum officers and immigration judges account for such aliens' ineligibility for asylum within the expedited-removal process, so that aliens subject to such a bar will be processed swiftly. Furthermore, the rule continues to afford protection from removal for individuals who establish that they are more likely than not to be persecuted or tortured in the country of removal. Aliens rendered ineligible for asylum by this interim rule and who are referred for an interview in the expedited-removal process are still eligible to seek withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or protections under the regulations issued under the authority of the implementing legislation regarding Article 3 of the CAT. Such aliens could pursue such claims in proceedings before an immigration judge under section 240 of the INA, 8 U.S.C. 1229a, if they establish a reasonable fear of persecution or torture.

## III. Background

### *A. Joint Interim Rule*

The Attorney General and the Secretary of Homeland Security publish this joint interim rule pursuant to their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002, Public Law 107–296, as amended, transferred many functions related to the execution of federal immigration law to the newly created Department of Homeland Security. The Homeland Security Act of 2002 charges the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' 8 U.S.C. 1103(a)(1), and grants the Secretary the power to take all actions ''necessary for carrying out'' the provisions of the INA, *id.* 1103(a)(3). The Homeland Security Act of 2002 also transferred to DHS some responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). Those authorities have been delegated to U.S. Citizenship and Immigration Services (''USCIS''). USCIS asylum officers determine in the first instance whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.9.

But the Homeland Security Act of 2002 retained authority over certain individual immigration adjudications (including those related to defensive asylum applications) in DOJ, under the Executive Office for Immigration Review (''EOIR'') and subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). Thus, immigration judges within DOJ continue to adjudicate all asylum applications made by aliens during the removal process (defensive asylum applications), and they also review affirmative asylum applications referred by USCIS to the immigration court. *See* INA 101(b)(4), 8 U.S.C. 1101(b)(4); 8 CFR 1208.2; *Dhakal* v. *Sessions,* 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals (''BIA'' or ''Board''), also within DOJ, in turn hears appeals from immigration judges' decisions. 8 CFR 1003.1. In addition, the INA provides ''[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' INA 103(a)(1), 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this interim rule.

### *B. Legal Framework for Asylum*

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that precludes an alien from being subject to removal, creates a path to lawful permanent resident status and citizenship, and affords a variety of other benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R–S–C* v. *Sessions,* 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.,* INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed and can travel abroad with prior consent); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for asylee's spouse and unmarried children); INA 209(b), 8 U.S.C. 1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for naturalization of lawful permanent residents). Aliens who are granted asylum are authorized to work in the United States and may receive certain financial assistance from the federal government. *See* INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2); 8 U.S.C. 1612(a)(2)(A), (b)(2)(A); 8 U.S.C. 1613(b)(1); 8 CFR 274a.12(a)(5); *see also* 8 CFR 274a.12(c)(8) (providing that asylum applicants may seek employment authorization 150 days after filing a complete application for asylum).

Aliens applying for asylum must establish that they meet the definition of a ''refugee,'' that they are not subject to a bar to the granting of asylum, and that they merit a favorable exercise of discretion. INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A); *see Moncrieffe* v. *Holder,* 569 U.S. 184, 187 (2013) (describing asylum as a form of ''discretionary relief from removal''); *Delgado* v. *Mukasey,* 508 F.3d 702, 705 (2d Cir. 2007) (''Asylum is a discretionary form of relief . . . . Once an applicant has established eligibility . . . it remains within the Attorney General's discretion to deny asylum.''). Because asylum is a discretionary form of relief from removal, the alien bears the burden of showing both eligibility for asylum and why the Attorney General or Secretary should exercise discretion to grant relief. *See* INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A); *Romilus* v. *Ashcroft,* 385 F.3d 1, 8 (1st Cir. 2004).

Section 208 of the INA provides that, in order to apply for asylum, an applicant must be ''physically present'' or ''arriv[e]'' in the United States, ''whether or not at a designated port of arrival'' and ''irrespective of such alien's status''—but the applicant must also ''apply for asylum in accordance with'' the rest of section 208 or with the expedited-removal process in section 235 of the INA. INA 208(a)(1), 8 U.S.C. 1158(a)(1). Furthermore, to be granted asylum, the alien must demonstrate that he or she meets the statutory definition

of a ''refugee,'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A), and is not subject to an exception or bar, INA 208(b)(2), 8 U.S.C. 1158(b)(2). The alien bears the burden of proof to establish that he or she meets these criteria. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i); 8 CFR 1240.8(d).

For an alien to establish that he or she is a ''refugee,'' the alien generally must be someone who is outside of his or her country of nationality and ''is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A).

In addition, if evidence indicates that one or more of the grounds for mandatory denial may apply, an alien must show that he or she does not fit within one of the statutory bars to granting asylum and is not subject to any ''additional limitations and conditions . . . under which an alien shall be ineligible for asylum'' established by a regulation that is ''consistent with'' section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see* 8 CFR 1240.8(d). The INA currently bars a grant of asylum to any alien: (1) Who ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of'' a protected ground; (2) who, ''having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States''; (3) for whom there are serious reasons to believe the alien ''has committed a serious nonpolitical crime outside the United States'' prior to arrival in the United States; (4) for whom ''there are reasonable grounds for regarding the alien as a danger to the security of the United States''; (5) who is described in the terrorism-related inadmissibility grounds, with limited exceptions; or (6) who ''was firmly resettled in another country prior to arriving in the United States.'' INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi).

An alien who falls within any of those bars is subject to mandatory denial of asylum. Where there is evidence that ''one or more of the grounds for mandatory denial of the application for relief may apply,'' the applicant in immigration court proceedings bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d); *see also, e.g., Rendon* v. *Mukasey,* 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Gao* v. *U.S. Att'y Gen.,* 500 F.3d 93, 98 (2d Cir. 2007) (applying 8 CFR 1240.8(d) in the context of the persecutor bar); *Chen* v. *U.S. Att'y Gen.,* 513 F.3d 1255, 1257 (11th Cir. 2008) (same).

Because asylum is a discretionary benefit, aliens who are eligible for asylum are not automatically entitled to it. After demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the ''Secretary of Homeland Security or the Attorney General may grant asylum to an alien'' who applies in accordance with the required procedures and meets the definition of a ''refugee''). The asylum statute's grant of discretion ''is a broad delegation of power, which restricts the Attorney General's discretion to grant asylum only by requiring the Attorney General to first determine that the asylum applicant is a 'refugee.''' *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994), *overruled on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc) (per curiam). Immigration judges and asylum officers exercise that delegated discretion on a case-by-case basis. Under the Board's decision in *Matter of Pula,* 19 I&N Dec. 467 (BIA 1987), and its progeny, ''an alien's manner of entry or attempted entry is a proper and relevant discretionary factor'' and ''circumvention of orderly refugee procedures'' can be a ''serious adverse factor'' against exercising discretion to grant asylum, *id.* at 473, but ''[t]he danger of persecution will outweigh all but the most egregious adverse factors,'' *Matter of Kasinga,* 21 I&N Dec. 357, 367 (BIA 1996).

*C. Establishing Bars to Asylum*

The availability of asylum has long been qualified both by statutory bars and by administrative discretion to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum provisions, as set out in the Refugee Act of 1980, Public Law 96–212, simply directed the Attorney General to ''establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee'' within the meaning of the title. *See* 8 U.S.C. 1158(a) (1982); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 427–29 (1987) (describing the 1980 provisions).

In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to granting asylum that were modeled on the mandatory bars to eligibility for withholding of deportation under the existing section 243(h) of the INA. *See* Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980) (''The application will be denied if the alien does not come within the definition of refugee under the Act, is firmly resettled in a third country, or is within one of the undesirable groups described in section 243(h) of the Act, *e.g.,* having been convicted of a serious crime, constitutes a danger to the United States.''). Those regulations required denial of an asylum application if it was determined that (1) the alien was ''not a refugee within the meaning of section 101(a)(42)'' of the INA, 8 U.S.C. 1101(a)(42); (2) the alien had been ''firmly resettled in a foreign country'' before arriving in the United States; (3) the alien ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion''; (4) the alien had ''been convicted by a final judgment of a particularly serious crime'' and therefore constituted ''a danger to the community of the United States''; (5) there were ''serious reasons for considering that the alien ha[d] committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States''; or (6) there were ''reasonable grounds for regarding the alien as a danger to the security of the United States.'' *See id.* at 37394–95.

In 1990, the Attorney General substantially amended the asylum regulations while retaining the mandatory bars for aliens who persecuted others on account of a protected ground, were convicted of a particularly serious crime in the United States, firmly resettled in another country, or presented reasonable grounds to be regarded as a danger to the security of the United States. *See* Asylum and Withholding of Deportation Procedures, 55 FR 30674, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936–39 (9th Cir. 1996) (upholding firm-resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly-serious-crime bar). In the Immigration Act of 1990, Public Law 101–649, Congress added an additional mandatory bar to applying for or being granted asylum for ''[a]n[y] alien who has been convicted of an aggravated felony.'' Public Law 101–649, sec. 515.

In IIRIRA and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, Congress amended the asylum provisions in section 208 of the INA, 8 U.S.C. 1158. Among other amendments, Congress created three exceptions to section 208(a)(1)'s provision that an alien may apply for asylum, for (1) aliens who can be removed to a safe third country pursuant to bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604(a); *see* INA 208(a)(2)(A)–(C), 8 U.S.C. 1158(a)(2)(A)–(C).

Congress also adopted six mandatory exceptions to the authority of the Attorney General or Secretary to grant asylum that largely reflect pre-existing bars set forth in the Attorney General's asylum regulations. These exceptions cover (1) aliens who ''ordered, incited, or otherwise participated'' in the persecution of others on account of a protected ground; (2) aliens convicted of a ''particularly serious crime''; (3) aliens who committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) aliens who are a ''danger to the security of the United States''; (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who have ''firmly resettled in another country prior to arriving in the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' Public Law 104–208, div. C, sec. 604(a); *see* INA 201(a)(43), 8 U.S.C. 1101(a)(43).

Although Congress enacted specific exceptions, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two of those exceptions—the bars for ''particularly serious crimes'' and ''serious nonpolitical offenses.'' While Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may ''designate by regulation offenses that will be considered'' a ''particularly serious crime'' that ''constitutes a danger to the community of the United States.'' INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii). Courts and the Board have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Ali* v. *Achim,* 468 F.3d 462, 468–69 (7th Cir. 2006); *Delgado* v. *Holder,* 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute ''a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.'' INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii). Although these provisions continue to refer only to the Attorney General, the Departments interpret these provisions to also apply to the Secretary of Homeland Security by operation of the Homeland Security Act of 2002. *See* 6 U.S.C. 552; 8 U.S.C. 1103(a)(1).

Congress further provided the Attorney General with the authority, by regulation, to ''establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum under paragraph (1).'' INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). As the Tenth Circuit has recognized, ''the statute clearly empowers'' the Attorney General to ''adopt[] further limitations'' on asylum eligibility. *R–S–C,* 869 F.3d at 1187 & n.9. By allowing the imposition by regulation of ''additional limitations and conditions,'' the statute gives the Attorney General and the Secretary broad authority in determining what the ''limitations and conditions'' should be. The additional limitations on eligibility must be established ''by regulation,'' and must be ''consistent with'' the rest of section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).

Thus, the Attorney General in the past has invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a ''fundamental change in circumstances'' and on the ability of an applicant to safely relocate internally within the alien's country of nationality or of last habitual residence. *See* Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000). The courts have also viewed section 208(b)(2)(C) as conferring broad discretion, including to render aliens ineligible for asylum based on fraud. *See R–S–C,* 869 F.3d at 1187; *Nijjar* v. *Holder,* 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be ''one of the 'additional limitations . . . under which an alien shall be ineligible for asylum' that the Attorney General is authorized to establish by regulation'').

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), also establishes certain procedures for consideration of asylum applications. But Congress specified that the Attorney General ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B).

In sum, the current statutory framework leaves the Attorney General (and, after the Homeland Security Act, the Secretary) significant discretion to adopt additional bars to asylum eligibility. Beyond providing discretion to further define particularly serious crimes and serious nonpolitical offenses, Congress has provided the Attorney General and Secretary with discretion to establish by regulation any additional limitations or conditions on eligibility for asylum or on the consideration of applications for asylum, so long as these limitations are consistent with the asylum statute.

*D. Other Forms of Protection*

Aliens who are not eligible to apply for or be granted asylum, or who are denied asylum on the basis of the Attorney General's or the Secretary's discretion, may nonetheless qualify for protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is also deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 208.30(e)(2)–(4), 1208.3(b), 1208.16(a). An immigration judge may also consider an alien's eligibility for withholding and deferral of removal under regulations issued pursuant to the authority of the implementing legislation regarding Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, div. G, sec. 2242(b); 8 CFR 1208.3(b); *see also* 8 CFR 1208.16–1208.17.

These forms of protection bar an alien's removal to any country where the alien would ''more likely than not'' face persecution or torture, meaning that the alien would face a clear probability that his or her life or freedom would be threatened on account of a protected ground or a clear probability of torture. 8 CFR 1208.16(b)(2), (c)(2); *see Kouljinski* v. *Keisler,* 505 F.3d 534, 544–45 (6th Cir. 2007); *Sulaiman* v. *Gonzales,* 429 F.3d 347, 351 (1st Cir. 2005). Thus, if an alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of a statutory exception, an eligibility bar adopted by regulation, or a discretionary denial of asylum—the alien may be entitled to

statutory withholding of removal if not otherwise barred for that form of protection. INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 208.16, 1208.16; *see also Garcia* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) (''[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood.''). Likewise, an alien who establishes that he or she will more likely than not face torture in the country of removal will qualify for CAT protection. *See* 8 CFR 208.16(c), 1208.16(c). But, unlike asylum, statutory withholding and CAT protection do not: (1) Prohibit the Government from removing the alien to a third country where the alien would not face the requisite probability of persecution or torture; (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as protection for derivative family members). *See R–S–C,* 869 F.3d at 1180.

*E. Implementation of Treaty Obligations*

The framework described above is consistent with certain U.S. obligations under the 1967 Protocol Relating to the Status of Refugees (''Refugee Protocol''), which incorporates Articles 2 to 34 of the 1951 Convention Relating to the Status of Refugees (''Refugee Convention''), as well as U.S. obligations under Article 3 of the CAT. Neither the Refugee Protocol nor the CAT is self-executing in the United States. *See Khan* v. *Holder,* 584 F.3d 773, 783 (9th Cir. 2009) ('[T]he [Refugee] Protocol is not self-executing.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT ''was not self-executing''). These treaties are not directly enforceable in U.S. law, but some of the obligations they contain have been implemented through domestic implementing legislation. For example, the United States has implemented the non-refoulement provisions of these treaties—*i.e.,* provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, not through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca,* 480 U.S. at 440–41; Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, div. G, sec. 2242(b); 8 CFR 208.16(c), 208.17–208.18; 1208.16(c), 1208.17–1208.18. Limitations on the availability of asylum that do not affect the statutory withholding of removal or protection under the CAT regulations are consistent with these provisions. *See R–S–C,* 869 F.3d at 1188 & n.11; *Cazun* v. *Att'y Gen.,* 856 F.3d 249, 257 & n.16 (3d Cir. 2017); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

Limitations on eligibility for asylum are also consistent with Article 34 of the Refugee Convention, concerning assimilation of refugees, as implemented by section 208 of the INA, 8 U.S.C. 1158. Section 208 of the INA reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See Cardoza-Fonseca,* 480 U.S. at 441; *Garcia,* 856 F.3d at 42; *Cazun,* 856 F.3d at 257 & n. 16; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *R–S–C,* 869 F.3d at 1188; *Ramirez-Mejia,* 813 F.3d at 241. As noted above, Congress has long recognized the precatory nature of Article 34 by imposing various statutory exceptions and by authorizing the creation of new bars to asylum eligibility through regulation.

Courts have likewise rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. Courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited ''penalty'' under Article 31(1) of the Refugee Convention. *Cazun,* 856 F.3d at 257 & n.16; *Mejia,* 866 F.3d at 588. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing the issuance of international travel documents for refugees ''lawfully staying'' in a country's territory, mandates that every person who might qualify for statutory withholding must also be granted asylum. *Garcia,* 856 F.3d at 42; *R–S–C,* 869 F.3d at 1188.

## IV. Regulatory Changes

*A. Limitation on Eligibility for Asylum for Aliens Who Contravene a Presidential Proclamation Under Section 212(f) or 215(a)(1) of the INA Concerning the Southern Border*

Pursuant to section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Departments are revising 8 CFR 208.13(c) and 8 CFR 1208.13(c) to add a new mandatory bar on eligibility for asylum for certain aliens who are subject to a presidential proclamation suspending or imposing limitations on their entry into the United States pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), or section 215(a)(1) of the INA, 8 U.S.C. 1185(a)(1), and who enter the United States in contravention of such a proclamation after the effective date of this rule. The bar would be subject to several further limitations: (1) The bar would apply only prospectively, to aliens who enter the United States after the effective date of such a proclamation; (2) the proclamation must concern entry at the southern border; and (3) the bar on asylum eligibility would not apply if the proclamation expressly disclaims affecting asylum eligibility for aliens within its scope, or expressly provides for a waiver or exception that entitles the alien to relief from the limitation on entry imposed by the proclamation.

The President has both statutory and inherent constitutional authority to suspend the entry of aliens into the United States when it is in the national interest. *See United States ex rel. Knauff* v. *Shaughnessy,* 338 U.S. 537, 542 (1950) (''The exclusion of aliens is a fundamental act of sovereignty'' that derives from ''legislative power'' and also ''is inherent in the executive power to control the foreign affairs of the nation.''); *see also Proposed Interdiction of Haitian Flag Vessels,* 5 Op. O.L.C. 242, 244–45 (1981) (''[T]he sovereignty of the Nation, which is the basis of our ability to exclude all aliens, is lodged in both political branches of the government,'' and even without congressional action, the President may ''act[ ] to protect the United States from massive illegal immigration.'').

Congress, in the INA, has expressly vested the President with broad authority to restrict the ability of aliens to enter the United States. Section 212(f) states: ''Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.'' 8 U.S.C. 1182(f). ''By its plain language, [8 U.S.C.] § 1182(f) grants the President broad discretion to suspend the entry of aliens into the United States,'' including the authority ''to impose additional limitations on entry beyond the grounds for exclusion set forth in the INA.'' *Trump* v. *Hawaii,* 138 S. Ct. 2392, 2408 − 12 (2018). For instance, the Supreme Court considered it ''perfectly clear that 8 U.S.C. 1182(f) . . . grants the President ample power to establish a naval blockade that would simply deny illegal Haitian immigrants the ability to disembark on our shores,'' thereby preventing them from entering

the United States and applying for asylum. *Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 187 (1993).

The President's broad authority under section 212(f) is buttressed by section 215(a)(1), which states it shall be unlawful ''for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.'' 8 U.S.C. 1185(a)(1). The presidential orders that the Supreme Court upheld in *Sale* were promulgated pursuant to both sections 212(f) and 215(a)(1)—*see* 509 U.S. at 172 & n.27; *see also* Exec. Order 12807 (May 24, 1992) (''Interdiction of Illegal Aliens''); Exec. Order 12324 (Sept. 29, 1981) (''Interdiction of Illegal Aliens'') (revoked and replaced by Exec. Order 12807)—as was the proclamation upheld in *Trump* v. *Hawaii, see* 138 S. Ct. at 2405. Other presidential orders have solely cited section 215(a)(1) as authority. *See, e.g.,* Exec. Order 12172 (Nov. 26, 1979) (''Delegation of Authority With Respect to Entry of Certain Aliens Into the United States'') (invoking section 215(a)(1) with respect to certain Iranian visa holders).

An alien whose entry is suspended or limited by a proclamation is one whom the President has determined should not enter the United States, or only should do so under certain conditions. Such an order authorizes measures designed to prevent such aliens from arriving in the United States as a result of the President's determination that it would be against the national interest for them to do so. For example, the proclamation and order that the Supreme Court upheld in *Sale,* Proc. 4865 (Sept. 29, 1981) (''High Seas Interdiction of Illegal Aliens''); Exec. Order 12324, directed the Coast Guard to interdict the boats of tens of thousands of migrants fleeing Haiti to prevent them from reaching U.S. shores, where they could make claims for asylum. The order further authorized the Coast Guard to intercept any vessel believed to be transporting undocumented aliens to the United States, ''[t]o make inquiries of those on board, examine documents, and take such actions as are necessary to carry out this order,'' and ''[t]o return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws.'' Exec. Order 12807, sec. 2(c).

An alien whose entry is suspended or restricted under such a proclamation, but who nonetheless reaches U.S. soil contrary to the President's determination that the alien should not be in the United States, would remain subject to various procedures under immigration laws. For instance, an alien subject to a proclamation who nevertheless entered the country in contravention of its terms generally would be placed in expedited-removal proceedings under section 235 of the INA, 8 U.S.C. 1225, and those proceedings would allow the alien to raise any claims for protection before being removed from the United States, if appropriate. Furthermore, the asylum statute provides that ''[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival),'' and ''irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, [8 U.S.C.] 1225(b).'' INA 208(a)(1), 8 U.S.C. 1158(a)(1). Some past proclamations have accordingly made clear that aliens subject to an entry bar may still apply for asylum if they have nonetheless entered the United States. *See, e.g.,* Proc. 9645, sec. 6(e) (Sept. 24, 2017) (''Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats'') (''Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.'').

As noted above, however, the asylum statute also authorizes the Attorney General and Secretary ''by regulation'' to ''establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum,'' INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C), and to set conditions or limitations on the consideration of an application for asylum, INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). The Attorney General and the Secretary have determined that this authority should be exercised to render ineligible for a grant of asylum any alien who is subject to a proclamation suspending or restricting entry along the southern border with Mexico, but who nonetheless enters the United States after such a proclamation goes into effect. Such an alien would have engaged in actions that undermine a particularized determination in a proclamation that the President judged as being required by the national interest: That the alien should not enter the United States.

The basis for ineligibility in these circumstances would be the Departments' conclusion that aliens who contravene such proclamations should not be eligible for asylum. Such proclamations generally reflect sensitive determinations regarding foreign relations and national security that Congress recognized should be entrusted to the President. *See Trump* v. *Hawaii,* 138 S. Ct. at 2411. Aliens who contravene such a measure have not merely violated the immigration laws, but have also undercut the efficacy of a measure adopted by the President based upon his determination of the national interest in matters that could have significant implications for the foreign affairs of the United States. For instance, previous proclamations were directed solely at Haitian migrants, nearly all of whom were already inadmissible by virtue of other provisions of the INA, but the proclamation suspended entry and authorized further measures to ensure that such migrants did not enter the United States contrary to the President's determination. *See, e.g.,* Proc. 4865; Exec. Order 12807.

In the case of the southern border, a proclamation that suspended the entry of aliens who crossed between the ports of entry would address a pressing national problem concerning the immigration system and our foreign relations with neighboring countries. Even if most of those aliens would already be inadmissible under our laws, the proclamation would impose limitations on entry for the period of the suspension against a particular class of aliens defined by the President. That judgment would reflect a determination that certain illegal entrants—namely, those crossing between the ports of entry on the southern border during the duration of the proclamation—were a source of particular concern to the national interest. Furthermore, such a proclamation could authorize additional measures to prevent the entry of such inadmissible aliens, again reflecting the national concern with this subset of inadmissible aliens. The interim final rule reflects the Departments' judgment that, under the extraordinary circumstances presented here, aliens crossing the southern border in contravention of such a proclamation should not be eligible for a grant of asylum during the period of suspension or limitation on entry. The result would be to channel to ports of entry aliens who seek to enter the United States and assert an intention to apply for asylum or a fear of persecution, and to provide for consideration of those statements there.

Significantly, this bar to eligibility for a grant of asylum would be limited in scope. This bar would apply only prospectively. This bar would further

apply only to a proclamation concerning entry along the southern border, because this interim rule reflects the need to facilitate urgent action to address current conditions at that border. This bar would not apply to any proclamation that expressly disclaimed an effect on eligibility for asylum. And this bar would not affect an applicant who is granted a waiver or is excepted from the suspension under the relevant proclamation, or an alien who did not at any time enter the United States after the effective date of such proclamation.

Aliens who enter in contravention of a proclamation will not, however, overcome the eligibility bar merely because a proclamation has subsequently ceased to have effect. The alien still would have entered notwithstanding a proclamation at the time the alien entered the United States, which would result in ineligibility for asylum (but not for statutory withholding or for CAT protection). Retaining eligibility for asylum for aliens who entered the United States in contravention of the proclamation, but evaded detection until it had ceased, could encourage aliens to take riskier measures to evade detection between ports of entry, and would continue to stretch government resources dedicated to apprehension efforts.

This restriction on eligibility to asylum is consistent with section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1). The regulation establishes a condition on asylum eligibility, not on the ability to apply for asylum. *Compare* INA 208(a), 8 U.S.C. 1158(a) (describing conditions for applying for asylum), *with* INA 208(b), 8 U.S.C. 1158(b) (identifying exceptions and bars to granting asylum). And, as applied to a proclamation that suspends the entry of aliens who crossed between the ports of entry at the southern border, the restriction would not preclude an alien physically present in the United States from being granted asylum if the alien arrives in the United States through any border other than the southern land border with Mexico or at any time other than during the pendency of a proclamation suspending or limiting entry.

*B. Screening Procedures in Expedited Removal for Aliens Subject to Proclamations*

The rule would also modify certain aspects of the process for screening claims for protection asserted by aliens who have entered in contravention of a proclamation and who are subject to expedited removal under INA 235(b)(1), 8 U.S.C. 1225(b)(1). Under current procedures, aliens who unlawfully enter the United States may avoid being removed on an expedited basis by making a threshold showing of a credible fear of persecution at a initial screening interview. At present, those aliens are often released into the interior of the United States pending adjudication of such claims by an immigration court in section 240 proceedings especially if those aliens travel as family units. Once an alien is released, adjudications can take months or years to complete because of the increasing volume of claims and the need to expedite cases in which aliens have been detained. The Departments expect that a substantial proportion of aliens subject to an entry proclamation concerning the southern border would be subject to expedited removal, since approximately 234,534 aliens in FY 2018 who presented at a port of entry or were apprehended at the border were referred to expedited-removal proceedings.[1] The procedural changes within expedited removal would be confined to aliens who are ineligible for asylum because they are subject to a regulatory bar for contravening an entry proclamation.

1. Under existing law, expedited-removal procedures—streamlined procedures for expeditiously reviewing claims and removing certain aliens—apply to those individuals who arrive at a port of entry or those who have entered illegally and are encountered by an immigration officer within 100 miles of the border and within 14 days of entering. *See* INA 235(b), 8 U.S.C. 1225(b); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004). To be subject to expedited removal, an alien must also be inadmissible under INA 212(a)(6)(C) or (a)(7), 8 U.S.C. 1182(a)(6)(C) or (a)(7), meaning that the alien has either tried to procure documentation through misrepresentation or lacks such documentation altogether. Thus, an alien encountered in the interior of the United States who entered in contravention of a proclamation and who is not otherwise amenable to expedited removal would be placed in proceedings under section 240 of the INA. The interim rule does not invite comment on existing regulations implementing the present scope of expedited removal.

Section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), prescribes procedures in the expedited-removal context for screening an alien's eligibility for asylum. When these provisions were being debated in 1996, legislators expressed particular concern that ''[e]xisting procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative,'' and that ''[t]he asylum system has been abused by those who seek to use it as a means of 'backdoor' immigration.'' *See* H.R. Rep. No. 104–469, pt. 1, at 107 (1996). Members of Congress accordingly described the purpose of expedited removal and related procedures as ''streamlin[ing] rules and procedures in the Immigration and Nationality Act to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States.'' *Id.* at 157; *see Am. Immigration Lawyers Ass'n* v. *Reno,* 18 F. Supp. 2d 38, 41 (D.D.C. 1998), *aff'd,* 199 F.3d 1352 (DC Cir. 2000) (rejecting several constitutional challenges to IIRIRA and describing the expedited-removal process as a ''summary removal process for adjudicating the claims of aliens who arrive in the United States without proper documentation'').

Congress thus provided that aliens ''inadmissible under [8 U.S.C.] 1182(a)(6)(C) or 1182(a)(7)'' shall be ''removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. 1158] or a fear of persecution.'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i); *see* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii) (such aliens shall be referred ''for an interview by an asylum officer''). On its face, the statute refers only to proceedings to establish eligibility for an affirmative grant of asylum and its attendant benefits, not to statutory withholding of removal or CAT protection against removal to a particular country.

An alien referred for a credible-fear interview must demonstrate a ''credible fear,'' defined as a ''significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under [8 U.S.C. 1158].'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). According to the House report, ''[t]he credible-fear standard [wa]s designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process.'' H.R. Rep. No. 104–69, at 158.

[1] As noted below, in FY 2018, approximately 171,511 aliens entered illegally between ports of entry, were apprehended by CBP, and were placed in expedited removal. Approximately 59,921 inadmissible aliens arrived at ports of entry and were placed in expedited removal. Furthermore, ICE arrested some 3,102 aliens and placed them in expedited removal.

If the asylum officer determines that the alien lacks a credible fear, then the alien may request review by an immigration judge. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). If the immigration judge concurs with the asylum officer's negative credible-fear determination, then the alien shall be removed from the United States without further review by either the Board or the courts. INA 235(b)(1)(B)(iii)(I), (b)(1)(C), 8 U.S.C. 1225(b)(1)(B)(iii)(I), (b)(1)(C); INA 242(a)(2)(A)(iii), (e)(5), 8 U.S.C. 1252(a)(2)(A)(iii), (e)(5); *Pena* v. *Lynch,* 815 F.3d 452, 457 (9th Cir. 2016). By contrast, if the asylum officer or immigration judge determines that the alien has a credible fear—*i.e.,* ''a significant possibility . . . that the alien could establish eligibility for asylum,'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v)—then the alien, under current regulations, is placed in section 240 proceedings for a full hearing before an immigration judge, with appeal available to the Board and review in the federal courts of appeals, *see* INA 235(b)(1)(B)(ii), (b)(2)(A), 8 U.S.C. 1225(b)(1)(B)(ii), (b)(2)(A); INA 242(a), 8 U.S.C. 1252(a); 8 CFR 208.30(e)(5), 1003.1. The interim rule does not invite comment on existing regulations implementing this framework.

By contrast, section 235 of the INA is silent regarding procedures for the granting of statutory withholding of removal and CAT protection; indeed, section 235 predates the legislation directing implementation of U.S. obligations under Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, sec. 2242(b) (requiring implementation of CAT); IIRIRA, Public Law 104–208, sec. 302 (revising section 235 of the INA to include procedures for dealing with inadmissible aliens who intend to apply for asylum). The legal standards for ultimately granting asylum on the merits versus statutory withholding or CAT protection are also different. Asylum requires an applicant to ultimately establish a ''well-founded fear'' of persecution, which has been interpreted to mean a ''reasonable possibility'' of persecution—a ''more generous'' standard than the ''clear probability'' of persecution or torture standard that applies to statutory withholding or CAT protection. *See INS* v. *Stevic,* 467 U.S. 407, 425, 429–30 (1984); *Santosa* v. *Mukasey,* 528 F.3d 88, 92 & n.1 (1st Cir. 2008); *compare* 8 CFR 1208.13(b)(2)(i)(B) *with* 8 CFR 1208.16(b)(2), (c)(2). As a result, applicants who establish eligibility for asylum are not necessarily eligible for statutory withholding or CAT protection.

Current regulations instruct USCIS adjudicators and immigration judges to treat an alien's request for asylum in expedited-removal proceedings under section 1225(b) as a request for statutory withholding and CAT protection as well. *See* 8 CFR 208.3(b), 208.30(e)(2)–(4), 1208.3(b), 1208.16(a). In the context of expedited-removal proceedings, ''credible fear of persecution'' is defined to mean a ''significant possibility'' that the alien ''could establish eligibility for asylum under section 1158,'' not CAT or statutory withholding. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Regulations nevertheless have generally provided that aliens in expedited removal should be subject to the same process for considering statutory withholding of removal claims under INA 241(b)(3), 8 U.S.C. 1231(b)(3), and claims for protection under the CAT, as they are for asylum claims. *See* 8 CFR 208.30(e)(2)–(4).

Thus, when the Immigration and Naturalization Service provided for claims for statutory withholding of removal and CAT protection to be considered in the same expedited-removal proceedings as asylum, the result was that if an alien showed that there was a significant possibility of establishing eligibility for asylum and was therefore referred for removal proceedings under section 240 of the INA, any potential statutory withholding and CAT claims the alien might have were referred as well. This was done on the assumption that that it would not ''disrupt[ ] the streamlined process established by Congress to circumvent meritless claims.'' Regulations Concerning the Convention Against Torture, 64 FR 8478, 8485 (Feb. 19, 1999). But while the INA authorizes the Attorney General and Secretary to provide for consideration of statutory withholding and CAT claims together with asylum claims or other matters that may be considered in removal proceedings, the INA does not require that approach, *see Foti* v. *INS,* 375 U.S. 217, 229–30 & n.16 (1963), or that they be considered in the same way.

Since 1999, regulations also have provided for a distinct ''reasonable fear'' screening process for certain aliens who are categorically ineligible for asylum and can thus make claims only for statutory withholding or CAT protections. *See* 8 CFR 208.31. Specifically, if an alien is subject to having a previous order of removal reinstated or is a non-permanent resident alien subject to an administrative order of removal resulting from an aggravated felony conviction, then he is categorically ineligible for asylum. *See id.* § 208.31(a), (e). Such an alien can be placed in withholding-only proceedings to adjudicate his statutory withholding or CAT claims, but only if he first establishes a ''reasonable fear'' of persecution or torture through a screening process that tracks the credible-fear process. *See id.* § 208.31(c), (e). Reasonable fear is defined by regulation to mean a ''reasonable possibility that [the alien] would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal.'' *Id.* § 208.31(c). ''This . . . screening process is modeled on the credible-fear screening process, but requires the alien to meet a higher screening standard.'' Regulations Concerning the Convention Against Torture, 64 FR at 8485; *see also Garcia* v. *Johnson,* No. 14–CV–01775, 2014 WL 6657591, at *2 (N.D. Cal. Nov. 21, 2014) (describing the aim of the regulations as providing ''fair and efficient procedures'' in reasonable-fear screening that would comport with U.S. international obligations).

Significantly, when establishing the reasonable-fear screening process, DOJ explained that the two affected categories of aliens should be screened based on the higher reasonable-fear standard because, ''[u]nlike the broad class of arriving aliens who are subject to expedited removal, these two classes of aliens are ineligible for asylum,'' and may be entitled only to statutory withholding of removal or CAT protection. Regulations Concerning the Convention Against Torture, 64 FR at 8485. ''Because the standard for showing entitlement to these forms of protection (a probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution), the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'' *Id.*

2. Drawing on the established framework for considering whether to grant withholding of removal or CAT protection in the reasonable-fear context, this interim rule establishes a bifurcated screening process for aliens subject to expedited removal who are ineligible for asylum by virtue of entering in contravention of a proclamation, but who express a fear of return or seek statutory withholding or CAT protection. The Attorney General and Secretary have broad authority to

implement the immigration laws, *see* INA 103, 8 U.S.C. 1103, including by establishing regulations, *see* INA 103, 8 U.S.C. 1103(a)(3), and to regulate ''conditions or limitations on the consideration of an application for asylum,'' *id.* 1158(d)(5)(B). Furthermore, the Secretary has the authority—in her ''sole and unreviewable discretion,'' the exercise of which may be ''modified at any time''—to designate additional categories of aliens that will be subject to expedited-removal procedures, so long as the designated aliens have not been admitted or paroled nor continuously present in the United States for two years. INA 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii). The Departments have frequently invoked these authorities to establish or modify procedures affecting aliens in expedited-removal proceedings, as well as to adjust the categories of aliens subject to particular procedures within the expedited-removal framework.[2]

This rule does not change the credible-fear standard for asylum claims, although the regulation would expand the scope of the inquiry in the process. An alien who is subject to a relevant proclamation and nonetheless has entered the United States after the effective date of such a proclamation in contravention of that proclamation would be ineligible for asylum and would thus not be able to establish a ''significant possibility . . . [of] eligibility for asylum under section 1158.'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). As current USCIS guidance explains, under the credible-fear standard, ''[a] claim that has no possibility, or only a minimal or mere possibility, of success, would not meet the 'significant possibility' standard.'' USCIS, Office of Refugee, Asylum, & Int'l Operations, Asylum Div., *Asylum Officer Basic Training Course, Lesson Plan on Credible Fear* at 15 (Feb. 13, 2017). Consistent with section 235(b)(1)(B)(iii)(III) of the INA, the alien could still obtain review from an immigration judge regarding whether the asylum officer correctly determined that the alien was subject to a limitation or suspension on entry imposed by a proclamation. Further, consistent with section 235(b)(1)(B) of the INA, if the immigration judge reversed the asylum officer's determination, the alien could assert the asylum claim in section 240 proceedings.

Aliens determined to be ineligible for asylum by virtue of contravening a proclamation, however, would still be screened, but in a manner that reflects that their only viable claims would be for statutory withholding or CAT protection pursuant to 8 CFR 208.30(e)(2)–(4) and 1208.16(a). After determining the alien's ineligibility for asylum under the credible-fear standard, the asylum officer would apply the long-established reasonable-fear standard to assess whether further proceedings on a possible statutory withholding or CAT protection claim are warranted. If the asylum officer determined that the alien had not established the requisite reasonable fear, the alien then could seek review of that decision from an immigration judge (just as the alien may under existing 8 CFR 208.30 and 208.31), and would be subject to removal only if the immigration judge agreed with the negative reasonable-fear finding. Conversely, if either the asylum officer or the immigration judge determined that the alien cleared the reasonable-fear threshold, the alien would be put in section 240 proceedings, just like aliens who receive a positive credible-fear determination for asylum. Employing a reasonable-fear standard in this context, for this category of ineligible aliens, would be consistent with the Department of Justice's longstanding rationale that ''aliens ineligible for asylum,'' who could only be granted statutory withholding of removal or CAT protection, should be subject to a different screening standard that would correspond to the higher bar for actually obtaining these forms of protection. *See* Regulations Concerning the Convention Against Torture, 64 FR at 8485 (''Because the standard for showing entitlement to these forms of protection . . . is significantly higher than the standard for asylum . . . the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'').

The screening process established by the interim rule will accordingly proceed as follows. For an alien subject to expedited removal, DHS will ascertain whether the alien seeks protection, consistent with INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). All aliens seeking asylum, statutory withholding of removal, or CAT protection will continue to go before an asylum officer for screening, consistent with INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B). The asylum officer will ask threshold questions to elicit whether an alien is ineligible for a grant of asylum pursuant to a proclamation entry bar. If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien otherwise demonstrates sufficient facts pertaining to asylum eligibility), then the alien will have established a credible fear.

If, however, an alien lacks a significant possibility of eligibility for asylum because of the proclamation bar, then the asylum officer will make a negative credible-fear finding. The asylum officer will then apply the reasonable-fear standard to assess the alien's claims for statutory withholding of removal or CAT protection.

An alien subject to the proclamation-based asylum bar who clears the reasonable-fear screening standard will be placed in section 240 proceedings, just as an alien who clears the credible-fear standard will be. In those proceedings, the alien will also have an opportunity to raise whether the alien was correctly identified as subject to the proclamation ineligibility bar to asylum, as well as other claims. If an immigration judge determines that the alien was incorrectly identified as subject to the proclamation, the alien will be able to apply for asylum. Such aliens can appeal the immigration judge's decision in these proceedings to the BIA and then seek review from a federal court of appeals.

Conversely, an alien who is found to be subject to the proclamation asylum bar and who does not clear the reasonable-fear screening standard can obtain review of both of those determinations before an immigration judge, just as immigration judges currently review negative credible-fear and reasonable-fear determinations. If the immigration judge finds that either determination was incorrect, then the alien will be placed into section 240 proceedings. In reviewing the determinations, the immigration judge will decide de novo whether the alien is subject to the proclamation asylum bar. If, however, the immigration judge affirms both determinations, then the alien will be subject to removal without further appeal, consistent with the existing process under section 235 of the INA. In short, aliens subject to the proclamation eligibility bar to asylum will be processed through existing procedures by DHS and EOIR in accordance with 8 CFR 208.30 and 1208.30, but will be subject to the

[2] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769 (Jan. 17, 2017); Designating Aliens For Expedited Removal, 69 FR 48877; Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry, 69 FR 10620 (March 8, 2004); New Rules Regarding Procedures for Asylum and Withholding of Removal, 63 FR 31945 (June 11, 1998); Asylum Procedures, 65 FR 76121; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999).

reasonable-fear standard as part of those procedures with respect to their statutory withholding and CAT protection claims.[3]

2. The above process will not affect the process in 8 CFR 208.30(e)(5) for certain existing statutory bars to asylum eligibility. Under that regulatory provision, many aliens who appear to fall within an existing statutory bar, and thus appear to be ineligible for asylum, can nonetheless be placed in section 240 proceedings if they are otherwise eligible for asylum and obtain immigration judge review of their asylum claims, followed by further review before the BIA and the courts of appeals. Specifically, with the exceptions of stowaways and aliens entering from Canada at a port of entry (who are generally ineligible to apply for asylum by virtue of a safe-third-country agreement), 8 CFR 208.30(e)(5) provides that ''if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the [INA] . . . [DHS] shall nonetheless place the alien in proceedings under section 240 of the [INA] for full consideration of the alien's claim.''

The language providing that the agency ''shall nonetheless place the alien in proceedings under section 240 of the [INA]'' was promulgated in 2000 in a final rule implementing asylum procedures after the 1996 enactment of IIRIRA. *See* Asylum Procedures, 65 FR at 76137. The explanation for this change was that some commenters suggested that aliens should be referred to section 240 proceedings ''regardless of any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the [INA]. The Department has adopted that suggestion and has so amended the regulation.'' *Id.* at 76129.

This rule will avoid a textual ambiguity in 8 CFR 208.30(e)(5), which is unclear regarding its scope, by adding a new sentence clarifying the process applicable to an alien barred under a covered proclamation. *See* 8 CFR 208.30(e)(5) (referring to an alien who ''appears to be subject to one or more of the mandatory bars to . . . asylum contained in section 208(a)(2) and 208(b)(2) of the [INA]''). By using a definite article (''the mandatory bars to . . . asylum'') and the phrase ''contained in,'' 8 CFR 208.30(e)(5) may refer only to aliens who are subject to the defined mandatory bars ''contained in'' specific parts of section 208 of the INA, such as the bar for aggravated felons, INA 208(b)(2)(B)(i), 8 U.S.C. 1558(b)(2)(B)(i), or the bar for aliens reasonably believed to be a danger to U.S. security, INA 208(b)(2)(A)(iv), 8 U.S.C. 1158(b)(2)(A)(iv). It is thus not clear whether an alien subject to a further limitation or condition on asylum eligibility adopted pursuant to section 208(b)(2)(C) of the INA would also be subject to the procedures set forth in 8 CFR 208.30(e)(5). Notably, the preamble to the final rule adopting 8 CFR 208.30(e)(5) indicated that it was intended to apply to ''any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the [INA],'' and did not address future regulatory ineligibility under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). Asylum Procedures, 65 FR at 76129. This rule does not resolve that question, however, but instead establishes an express regulatory provision dealing specifically with aliens subject to a limitation under section 212(f) or 215(a)(1) of the INA.

*C. Anticipated Effects of the Rule*

1. The interim rule aims to address an urgent situation at the southern border. In recent years, there has been a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States and then assert an intent to apply for asylum or a fear of persecution. The vast majority of such assertions for protection occur in the expedited-removal context, and the rates at which such aliens receive a positive credible-fear determination have increased in the last five years. Having passed through the credible-fear screening process, many of these aliens are released into the interior to await further section 240 removal proceedings. But many aliens who pass through the credible-fear screening thereafter do not pursue their claims for asylum. Moreover, a substantial number fail to appear for a section 240 proceeding. And even aliens who passed through credible-fear screening and apply for asylum are granted it at a low rate.

Recent numbers illustrate the scope and scale of the problems caused by the disconnect between the number of aliens asserting a credible fear and the number of aliens who ultimately are deemed eligible for, and granted, asylum. In FY 2018, DHS identified some 612,183 inadmissible aliens who entered the United States, of whom 404,142 entered unlawfully between ports of entry and were apprehended by CBP, and 208,041 presented themselves at ports of entry. Those numbers exclude the inadmissible aliens who crossed but evaded detection, and interior enforcement operations conducted by U.S. Immigration and Customs Enforcement (''ICE''). The vast majority of those inadmissible aliens—521,090—crossed the southern border. Approximately 98% (396,579) of all aliens apprehended after illegally crossing between ports of entry made their crossings at the southern border, and 76% of all encounters at the southern border reflect such apprehensions. By contrast, 124,511 inadmissible aliens presented themselves at ports of entry along the southern border, representing 60% of all port traffic for inadmissible aliens and 24% of encounters with inadmissible aliens at the southern border.

Nationwide, DHS has preliminarily calculated that throughout FY 2018, approximately 234,534 aliens who presented at a port of entry or were apprehended at the border were referred to expedited-removal proceedings. Of that total, approximately 171,511 aliens were apprehended crossing between ports of entry; approximately 59,921 were inadmissible aliens who presented at ports of entry; and approximately 3,102 were arrested by ICE and referred to expedited removal.[4] The total number of aliens of all nationalities referred to expedited-removal proceedings has significantly increased over the last decade, from 161,516 aliens in 2008 to approximately 234,534 in FY 2018 (an overall increase of about 45%). Of those totals, the number of aliens from the Northern Triangle referred to expedited-removal proceedings has increased from 29,206 in FY 2008 (18% of the total

[3] Nothing about this screening process or in this interim rule would alter the existing procedures for processing alien stowaways under the INA and associated regulations. An alien stowaway is unlikely to be subject to 8 CFR 208.13(c)(3) and 1208.13(c)(3) unless a proclamation specifically applies to stowaways or to entry by vessels or aircraft. INA 101(a)(49), 8 U.S.C. 1101(a)(49). Moreover, an alien stowaway is barred from being placed into section 240 proceedings regardless of the level of fear of persecution he establishes. INA 235(a)(2), 8 U.S.C. 1225(a)(2). Similarly, despite the incorporation of a reasonable-fear standard into the evaluation of certain cases under credible-fear procedures, nothing about this screening process or in this interim rule implicates existing reasonable-fear procedures in 8 CFR 208.31 and 1208.31.

[4] All references to the number of aliens subject to expedited removal in FY 2018 reflect data for the first three quarters of the year and projections for the fourth quarter of FY 2018. It is unclear whether the ICE arrests reflect additional numbers of aliens processed at ports of entry. Another approximately 130,211 aliens were subject to reinstatement, meaning that the alien had previously been removed and then unlawfully entered the United States again. The vast majority of reinstatements involved Mexican nationals. Aliens subject to reinstatement who express a fear of persecution or torture receive reasonable-fear determinations under 8 CFR 208.31.

161,516 aliens referred) to approximately 103,752 in FY 2018 (44% of the total approximately 234,534 aliens referred, an increase of over 300%). In FY 2018, nationals of the Northern Triangle represented approximately 103,752 (44%) of the aliens referred to expedited-removal proceedings; approximately 91,235 (39%) were Mexican; and nationals from other countries made up the remaining balance (17%). As of the date of this rule, final expedited-removal statistics for FY 2018 specific to the southern border are not available. But the Departments' experience with immigration enforcement has demonstrated that the vast majority of expedited-removal actions have also occurred along the southern border.

Once in expedited removal, some 97,192 (approximately 41% of all aliens in expedited removal) were referred for a credible-fear interview with an asylum officer, either because they expressed a fear of persecution or torture or an intent to apply for protection. Of that number, 6,867 (7%) were Mexican nationals, 25,673 (26%) were Honduran, 13,433 (14%) were Salvadoran, 24,456 (25%) were Guatemalan, and other nationalities made up the remaining 28% (the largest proportion of which were 7,761 Indian nationals).

In other words: Approximately 61% of aliens from Northern Triangle countries placed in expedited removal expressed the intent to apply for asylum or a fear of persecution and triggered credible-fear proceedings in FY 2018 (approximately 69% of Hondurans, 79% of Salvadorans, and 49% of Guatemalans). These aliens represented 65% of all credible-fear referrals in FY 2018. By contrast, only 8% of aliens from Mexico trigger credible-fear proceedings when they are placed in expedited removal, and Mexicans represented 7% of all credible-fear referrals. Other nationalities compose the remaining 26,763 (28%) referred for credible-fear interviews.

Once these 97,192 aliens were interviewed by an asylum officer, 83,862 cases were decided on the merits (asylum officers closed the others).[5] Those asylum officers found a credible fear in 89% (74,574) of decided cases—meaning that almost all of those aliens' cases were referred on for further immigration proceedings under section 240, and many of the aliens were released into the interior while awaiting those proceedings.[6] As noted, nationals of Northern Triangle countries represent the bulk of credible-fear referrals (65%, or 63,562 cases where the alien expressed an intent to apply for asylum or asserted a fear). In cases where asylum officers decided whether nationals of these countries had a credible fear, they received a positive credible-fear finding 88% of the time.[7] Moreover, when aliens from those countries sought review of negative findings by an immigration judge, they obtained reversals approximately 18% of the time, resulting in some 47,507 cases in which nationals of Northern Triangle countries received positive credible-fear determinations.[8] In other words: Aliens from Northern Triangle countries ultimately received a positive credible-fear determination 89% of the time. Some 6,867 Mexican nationals were interviewed; asylum officers gave them a positive credible-fear determination in 81% of decided cases (4,261), and immigration judges reversed an additional 91 negative credible-fear determinations, resulting in some 4,352 cases (83% of cases decided on the merits) in which Mexican nationals were referred to section 240 proceedings after receiving a positive credible-fear determination.

These figures have enormous consequences for the asylum system writ large. Asylum officers and immigration judges devote significant resources to these screening interviews, which the INA requires to happen within a fixed statutory timeframe. These aliens must also be detained during the pendency of expedited-removal proceedings. *See* INA 235(b), 8 U.S.C. 1225(b); *Jennings* v. *Rodriguez,* 138 S. Ct. 830, 834 (2018). And assertions of credible fear in expedited removal have rapidly grown in the last decade—especially in the last five years. In FY 2008, for example, fewer than 5,000 aliens were in expedited removal (5%) and were thus referred for a credible-fear interview. In FY 2014, 51,001 referrals occurred (representing 21% of aliens in expedited removal). The credible-fear referral numbers today reflect a 190% increase from FY 2014 and a nearly 2000% increase from FY 2008. Furthermore, the percentage of cases in which asylum officers found that aliens had established a credible fear—leading to the aliens being placed in section 240 removal proceedings—has also increased in recent years. In FY 2008, asylum officers found a credible fear in about 3,200 (or 77%) of all cases. In FY 2014, asylum officers found a credible fear in about 35,000 (or 80%) of all cases in which they made a determination. And in FY 2018, asylum officers found a credible fear in nearly 89% of all such cases.

Once aliens are referred for section 240 proceedings, their cases may take months or years to adjudicate due to backlogs in the system. As of November 2, 2018, there were approximately 203,569 total cases pending in the immigration courts that originated with a credible-fear referral—or 26% of the total backlog of 791,821 removal cases. Of that number, 136,554 involved nationals of Northern Triangle countries (39,940 cases involving Hondurans; 59,702 involving Salvadoran nationals; 36,912 involving Guatemalan nationals). Another 10,736 cases involved Mexican nationals.

In FY 2018, immigration judges completed 34,158 total cases that originated with a credible-fear referral.[9]

[5] DHS sometimes calculates credible-fear grant rates as a proportion of all cases (positive, negative, and closed cases). Because this rule concerns the merits of the screening process and closed cases are not affected by that process, this preamble discusses the proportions of determinations on the merits when describing the credible-fear screening process. This preamble does, however, account for the fact that some proportion of closed cases are also sent to section 240 proceedings when discussing the number of cases that immigration judges completed involving aliens referred for a credible-fear interview while in expedited-removal proceedings.

[6] Stowaways are the only category of aliens who would receive a positive credible-fear determination and go to asylum-only proceedings, as opposed to section 240 proceedings, but the number of stowaways is very small. Between FY 2013 and FY 2017, an average of roughly 300 aliens per year were placed in asylum-only proceedings, and that number includes not only stowaways but all classes of aliens subject to asylum-only proceedings. 8 CFR 1208.2(c)(1) (describing 10 categories of aliens, including stowaways found to have a credible fear, who are subject to asylum-only proceedings).

[7] Asylum officers decided 53,205 of these cases on the merits and closed the remaining 10,357 (but sent many of the latter to section 240 proceedings). Specifically, 25,673 Honduran nationals were interviewed; 21,476 of those resulted in a positive screening on the merits, 2,436 received a negative finding, and 1,761 were closed—meaning that 90% of all Honduran cases involving a merits determination resulted in a positive finding, and 10% were denied. Some 13,433 Salvadoran nationals were interviewed; 11,034 of those resulted in a positive screening on the merits 1,717 were denied, and 682 were closed—meaning that 86% of all Salvadoran cases involving a merits determination resulted in a positive finding, and 14% were denied. Some 24,456 Guatemalan nationals were interviewed; 14,183 of those resulted in a positive screening on the merits, 2,359 were denied, and 7,914 were closed—meaning that 86% of all Guatemalan cases involving a merits determination resulted in a positive finding, and 14% were denied. Again, the percentages exclude closed cases so as to describe how asylum officers make decisions on the merits.

[8] Immigration judges in 2018 reversed 18% (288) of negative credible-fear determinations involving Hondurans, 19% (241) of negative credible-fear determinations involving Salvadorans, and 17% (285) of negative credible-fear determinations involving Guatemalans.

[9] All descriptions of case outcomes before immigration judges reflect initial case completions by an immigration judge during the fiscal year

Continued

Those aliens were likely referred for credible-fear screening between 2015 and 2018; the vast majority of these cases arose from positive credible-fear determinations as opposed to the subset of cases that were closed in expedited removal and referred for section 240 proceedings. In a significant proportion of these cases, the aliens did not appear for section 240 proceedings or did not file an application for asylum in connection with those proceedings. In FY 2018, of the 34,158 completions that originated with a credible-fear referral, 24,361 (71%) were completed by an immigration judge with the issuance of an order of removal. Of those completed cases, 10,534 involved in absentia removal orders, meaning that in approximately 31% of all initial completions in FY 2018 that originated from a credible-fear referral, the alien failed to appear at a hearing. Moreover, of those 10,534 cases, there were 1,981 cases where an asylum application was filed, meaning 8,553 did not file an asylum application and failed to appear at a hearing. Further, 40% of all initial completions originating with a credible-fear referral (or 13,595 cases, including the 8,553 aliens just discussed) were completed in FY 2018 without an alien filing an application for asylum. In short, in nearly half of the cases completed by an immigration judge in FY 2018 involving aliens who passed through a credible-fear referral, the alien failed to appear at a hearing or failed to file an asylum application.

Those figures are consistent with trends from FY 2008 through FY 2018, during which time DHS pursued some 354,356 cases in the immigration courts that involved aliens who had gone through a credible-fear review (*i.e.,* the aliens received a positive credible-fear determination or their closed case was referred for further proceedings). During this period, however, only about 53% (189,127) of those aliens filed an asylum application, despite the fact that they were placed into further immigration proceedings under section 240 because they alleged a fear during expedited-removal proceedings.

Even among those aliens who received a credible-fear interview, filed for asylum, and appeared in section 240 proceedings to resolve their asylum claims—a category that would logically include the aliens with the greatest confidence in the merits of their claims—only a very small percentage received asylum. In FY 2018 immigration judges completed 34,158 cases that originated with a credible-fear referral; only 20,563 of those cases involved an application for asylum, and immigration judges granted only 5,639 aliens asylum. In other words, in FY 2018, less than about 6,000 aliens who passed through credible-fear screening (17% of all completed cases, 27% of all completed cases in which an asylum application was filed, and about 36% of cases where the asylum claim was adjudicated on the merits) established that they should be granted asylum. (An additional 322 aliens received either statutory withholding or CAT protection.) Because there may be multiple bases for denying an asylum application and immigration judges often make alternative findings for consideration of issues on appeal, EOIR does not track reasons for asylum denials by immigration judges at a granular level. Nevertheless, experience indicates that the vast majority of those asylum denials reflect a conclusion that the alien failed to establish a significant possibility of persecution, rather than the effect of a bar to asylum eligibility or a discretionary decision by an immigration judge to deny asylum to an alien who qualifies as a refugee.

The statistics for nationals of Northern Triangle countries are particularly illuminating. In FY 2018, immigration judges in section 240 proceedings adjudicated 20,784 cases involving nationals of Northern Triangle countries who were referred for credible-fear interviews and then referred to section 240 proceedings (*i.e.,* they expressed a fear and either received a positive credible-fear determination or had their case closed and referred to section 240 proceedings for an unspecified reason). Given that those aliens asserted a fear of persecution and progressed through credible-fear screening, those aliens presumably would have had the greatest reason to then pursue an asylum application. Yet in only about 54% of those cases did the alien file an asylum application. Furthermore, about 38% of aliens from Northern Triangle countries who were referred for credible-fear interviews and passed to section 240 proceedings did not appear, and were ordered removed in absentia. Put differently: Only a little over half of aliens from Northern Triangle countries who claimed a fear of persecution and passed threshold screening submitted an application for asylum, and over a third did not appear at section 240 proceedings.[10] And only 1,889 aliens from Northern Triangle countries were granted asylum, or approximately 9% of completed cases for aliens from Northern Triangle countries who received a credible-fear referral, 17% of the cases where such aliens filed asylum applications in their removal proceedings, and about 23% of cases where such aliens' asylum claims were adjudicated on the merits. Specifically, in FY 2018, 536 Hondurans, 408 Guatemalans, and 945 Salvadorans who initially were referred for a credible-fear interview (whether in FY 2018 or earlier) and progressed to section 240 proceedings were granted asylum.

The Departments thus believe that these numbers underscore the major costs and inefficiencies of the current asylum system. Again, numbers for Northern Triangle nationals—who represent the vast majority of aliens who claim a credible fear—illuminate the scale of the problem. Out of the 63,562 Northern Triangle nationals who expressed an intent to apply for asylum or a fear of persecution and received credible-fear screening interviews in FY 2018, 47,507 received a positive credible-fear finding from the asylum officer or immigration judge. (Another 10,357 cases were administratively closed, some of which also may have been referred to section 240 proceedings.) Those aliens will remain in the United States to await section 240 proceedings while immigration judges work through the current backlog of nearly 800,000 cases—136,554 of which involve nationals of Northern Triangle countries who passed through credible-

unless otherwise noted. All references to applications for asylum generally involve applications for asylum, as opposed to some other form of protection, but EOIR statistics do not distinguish between, for instance, the filing of an application for asylum or the filing of an application for statutory withholding. As noted, an application for asylum is also deemed an application for other forms of protection, and whether an application will be for asylum or only for some other form of protection is often a post-filing determination made by the immigration judge (for instance, because the one-year filing bar for asylum applies).

[10] These percentages are even higher for particular nationalities. In FY 2018, immigration judges adjudicated 7,151 cases involving Hondurans whose cases originated with a credible-fear referral in expedited-removal proceedings. Of that 7,151, only 49% (3,509) filed an application for asylum, and 44% (3,167) had their cases completed with an in absentia removal order because they failed to appear. Similarly, immigration judges adjudicated 5,382 cases involving Guatemalans whose cases originated with a credible-fear referral; only 46% (2,457) filed an asylum application, and 41% (2,218) received in absentia removal orders. The 8,251 Salvadoran cases had the highest rate of asylum applications (filed in 65% of cases, or 5,341), and 31% of the total cases (2,534) involved in absentia removal orders. Numbers for Mexican nationals reflected similar trends. In FY 2018, immigration judges adjudicated 3,307 cases involving Mexican nationals who progressed to section 240 proceedings after being referred for a credible-fear interview; 49% of them filed applications for asylum in these proceedings, and 25% of the total cases resulted in an in absentia removal order.

fear screening interviews. Immigration judges adjudicated 20,784 cases involving such nationals of Northern Triangle countries in FY 2018; slightly under half of those aliens did not file an application for asylum, and over a third were screened through expedited removal but did not appear for a section 240 proceeding. Even when nationals of Northern Triangle countries who passed through credible-fear screening applied for asylum (as 11,307 did in cases completed in FY 2018), immigration judges granted asylum to only 1,889, or 17% of the cases where such aliens filed asylum applications in their removal proceedings. Immigration judges found in the overwhelming majority of cases that the aliens had no significant possibility of persecution.

These existing burdens suggest an unsustainably inefficient process, and those pressures are now coupled with the prospect that large caravans of thousands of aliens, primarily from Central America, will seek to enter the United States unlawfully or without proper documentation and thereafter trigger credible-fear screening procedures and obtain release into the interior. The United States has been engaged in ongoing diplomatic negotiations with Mexico and the Northern Triangle countries (Guatemala, El Salvador, and Honduras) about the problems on the southern border, but those negotiations have, to date, proved unable to meaningfully improve the situation.

2. In combination with a presidential proclamation directed at the crisis on the southern border, the rule would help ameliorate the pressures on the present system. Aliens who could not establish a credible fear for asylum purposes due to the proclamation-based eligibility bar could nonetheless seek statutory withholding of removal or CAT protection, but would receive a positive finding only by establishing a reasonable fear of persecution or torture. In FY 2018, USCIS issued nearly 7,000 reasonable-fear determinations (*i.e.,* made a positive or negative determination)—a smaller number because the current determinations are limited to the narrow categories of aliens described above. Of those determinations, USCIS found a reasonable fear in 45% of cases in 2018, and 48% of cases in 2017. Negative reasonable-fear determinations were then subject to further review, and immigration judges reversed approximately 18%.

Even if rates of positive reasonable-fear findings increased when a more general population of aliens became subject to the reasonable-fear screening process, this process would better filter those aliens eligible for that form of protection. Even assuming that grant rates for statutory withholding in the reasonable-fear screening process (a higher standard) would be the same as grant rates for asylum, this screening mechanism would likely still allow through a significantly higher percentage of cases than would likely be granted. And the reasonable-fear screening rates would also still allow a far greater percentage of claimants through than would ultimately receive CAT protection. Fewer than 1,000 aliens per year, of any nationality, receive CAT protection.

To the extent that aliens continued to enter the United States in violation of a relevant proclamation, the application of the rule's bar to eligibility for asylum in the credible-fear screening process (combined with the application of the reasonable-fear standard to statutory withholding and CAT claims) would reduce the number of cases referred to section 240 proceedings. Finally, the Departments emphasize that this rule would not prevent aliens with claims for statutory withholding or CAT protection from having their claims adjudicated in section 240 proceedings after satisfying the reasonable-fear standard.

Further, determining whether an alien is subject to a suspension of entry proclamation would ordinarily be straightforward, because such orders specify the class of aliens whose entry is restricted. Likewise, adding questions designed to elicit whether an alien is subject to an entry proclamation, and employing a bifurcated credible-fear analysis for the asylum claim and reasonable-fear review of the statutory withholding and CAT claims, will likely not be unduly burdensome. Although DHS has generally not applied existing mandatory bars to asylum in credible-fear determinations, asylum officers currently probe for this information and note in the record where the possibility exists that a mandatory bar may apply. Though screening for proclamation-based ineligibility for asylum may in some cases entail some additional work, USCIS will account for it under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* as needed, following issuance of a covered proclamation. USCIS asylum officers and EOIR immigration judges have almost two decades of experience applying the reasonable-fear standard to statutory withholding and CAT claims, and do so in thousands of cases per year already (13,732 in FY 2018 for both EOIR and USCIS). *See, e.g.,* Memorandum for All Immigration Judges, et al., from The Office of the Chief Immigration Judge, Executive Office for Immigration Review at 6 (May 14, 1999) (explaining similarities between credible-fear and reasonable-fear proceedings for immigration judges).

That said, USCIS estimates that asylum officers have historically averaged four to five credible-fear interviews and completions per day, but only two to three reasonable-fear case completions per day. Comparing this against current case processing targets, and depending on the number of aliens who contravene a presidential proclamation, such a change might result in the need to increase the number of officers required to conduct credible-fear or reasonable-fear screenings to maintain current case completion goals. However, current reasonable-fear interviews are for types of aliens (aggravated felons and aliens subject to reinstatement) for whom relevant criminal and immigration records take time to obtain, and for whom additional interviewing and administrative processing time is typically required. The population of aliens who would be subject to this rule would generally not have the same type of criminal and immigration records in the United States, but additional interviewing time might be necessary. Therefore, it is unclear whether these averages would hold once the rule is implemented.

If an asylum officer determines that credible fear has been established but for the existence of the proclamation bar, and the alien seeks review of such determination before an immigration judge, DHS may need to shift additional resources towards facilitating such review in immigration court in order to provide records of the negative credible-fear determination to the immigration court. However, ICE attorneys, while sometimes present, generally do not advocate for DHS in negative credible-fear or reasonable-fear reviews before an immigration judge.

DHS would, however, also expend additional resources detaining aliens who would have previously received a positive credible-fear determination and who now receive, and challenge, a negative credible-fear and reasonable-fear determination. Aliens are generally detained during the credible-fear screening, but may be eligible for parole or release on bond if they establish a credible fear. To the extent that the rule may result in lengthier interviews for each case, aliens' length of stay in detention would increase. Furthermore, DHS anticipates that more negative determinations would increase the number of aliens who would be

detained and the length of time they would be detained, since fewer aliens would be eligible for parole or release on bond. Also, to the extent this rule would increase the number of aliens who receive both negative credible-fear and reasonable-fear determinations, and would thus be subject to immediate removal, DHS will incur increased and more immediate costs for enforcement and removal of these aliens. That cost would be counterbalanced by the fact that it would be considerably more costly and resource-intensive to ultimately remove such an alien after the end of section 240 proceedings, and the desirability of promoting greater enforcement of the immigration laws.

Attorneys from ICE represent DHS in full immigration proceedings, and immigration judges (who are part of DOJ) adjudicate those proceedings. If fewer aliens are found to have credible fear or reasonable fear and referred to full immigration proceedings, such a development will allow DOJ and ICE attorney resources to be reallocated to other immigration proceedings. The additional bars to asylum are unlikely to result in immigration judges spending much additional time on each case where the nature of the proclamation bar is straightforward to apply. Further, there will likely be a decrease in the number of asylum hearings before immigration judges because certain respondents will no longer be eligible for asylum and DHS will likely refer fewer cases to full immigration proceedings. If DHS officers identify the proclamation-based bar to asylum (before EOIR has acquired jurisdiction over the case), EOIR anticipates a reduction in both in-court and out-of-court time for immigration judges.

A decrease in the number of credible-fear findings and, thus, asylum grants would also decrease the number of employment authorization documents processed by DHS. Aliens are generally eligible to apply for and receive employment authorization and an Employment Authorization Document (Form I–766) after their asylum claim has been pending for more than 180 days. *See* INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii); 8 CFR 1208.7(a)(1)(2). This rule and any associated future presidential proclamations would also be expected to have a deterrent effect that could lessen future flows of illegal immigration.

3. The Departments are not in a position to determine how all entry proclamations involving the southern border could affect the decision calculus for various categories of aliens planning to enter the United States through the southern border in the near future. The focus of this rule is on the tens of thousands of aliens each year (97,192 in FY 2018) who assert a credible fear in expedited-removal proceedings and may thereby be placed on a path to release into the interior of the United States. The President has announced his intention to take executive action to suspend the entry of aliens between ports of entry and instead to channel such aliens to ports of entry, where they may seek to enter and assert an intent to apply for asylum in a controlled, orderly, and lawful manner. The Departments have accordingly assessed the anticipated effects of such a presidential action so as to illuminate how the rule would be applied in those circumstances.

a. *Effects on Aliens.* Such a proclamation, coupled with this rule, would have the most direct effect on the more than approximately 70,000 aliens a year (as of FY 2018) estimated to enter between the ports of entry and then assert a credible fear in expedited-removal proceedings.[11] If such aliens contravened a proclamation suspending their entry unless they entered at a port of entry, they would become ineligible for asylum, but would remain eligible for statutory withholding or CAT protection. And for the reasons discussed above, their claims would be processed more expeditiously. Conversely, if such aliens decided to instead arrive at ports of entry, they would remain eligible for asylum and would proceed through the existing credible-fear screening process.

Such an application of this rule could also affect the decision calculus for the estimated 24,000 or so aliens a year (as of FY 2018) who arrive at ports of entry along the southern border and assert a credible fear in expedited-removal proceedings.[12] Such aliens would likely face increased wait times at a U.S. port of entry, meaning that they would spend more time in Mexico. Third-country nationals in this category would have added incentives to take advantage of Mexican asylum procedures and to make decisions about travel to a U.S. port of entry based on information about which ports were most capable of swift processing.

Such an application of this rule could also affect aliens who apply for asylum affirmatively or in removal proceedings after entering through the southern border. Some of those asylum grants would become denials for aliens who became ineligible for asylum because they crossed illegally in contravention of a proclamation effective before they entered. Such aliens could, however, still obtain statutory withholding of removal or CAT protection in section 240 proceedings.

Finally, such a proclamation could also affect the thousands of aliens who are granted asylum each year. Those aliens' cases are equally subject to existing backlogs in immigration courts, and could be adjudicated more swiftly if the number of non-meritorious cases declined. Aliens with meritorious claims could thus more expeditiously receive the benefits associated with asylum.

b. *Effects on the Departments' Operations.* Applying this rule in conjunction with a proclamation that channeled aliens seeking asylum to ports of entry would likely create significant overall efficiencies in the Departments' operations beyond the general efficiencies discussed above. Channeling even some proportion of aliens who currently enter illegally and assert a credible fear to ports of entry would, on balance, be expected to help the Departments more effectively leverage their resources to promote orderly and efficient processing of inadmissible aliens.

At present, CBP dedicates enormous resources to attempting to apprehend aliens who cross the southern border illegally. As noted, CBP apprehended 396,579 such aliens in FY 2018. Such crossings often occur in remote locations, and over 16,000 CBP officers are responsible for patrolling hundreds of thousands of square miles of territory, ranging from deserts to mountainous terrain to cities. When a United States Border Patrol (''Border Patrol'' or ''USBP'') agent apprehends an alien who enters unlawfully, the USBP agent takes the alien into custody and transports the alien to a Border Patrol station for processing—which could be hours away. Family units apprehended after crossing illegally present additional logistical challenges, and may require additional agents to assist

[11] The Departments estimated this number by using the approximately 171,511 aliens in FY 2018 who were referred to expedited removal after crossing illegally between ports of entry and being apprehended by CBP. That number excludes the approximately 3,102 additional aliens who were arrested by ICE, because it is not clear at this time whether such aliens were ultimately processed at a port of entry. The Departments also relied on the fact that approximately 41% of aliens in expedited removal in FY 2018 triggered credible-fear screening.

[12] The Departments estimated this number by using the approximately 59,921 aliens in FY 2018 who were referred to expedited removal after presenting at a port of entry. That number excludes the approximately 3,102 additional aliens who were arrested by ICE, because it is not clear at this time whether such aliens were ultimately processed at a port of entry. The Departments also relied on the fact that approximately 41% of aliens in expedited removal in FY 2018 triggered credible-fear screening.

with the transport of the illegal aliens from the point of apprehension to the station for processing. And apprehending one alien or group of aliens may come at the expense of apprehending others while agents are dedicating resources to transportation instead of patrolling.

At the Border Patrol station, a CBP agent obtains an alien's fingerprints, photographs, and biometric data, and begins asking background questions about the alien's nationality and purpose in crossing. At the same time, agents must make swift decisions, in coordination with DOJ, as to whether to charge the alien with an immigration-related criminal offense. Further, agents must decide whether to apply expedited-removal procedures, to pursue reinstatement proceedings if the alien already has a removal order in effect, to authorize voluntary return, or to pursue some other lawful course of action. Once the processing of the alien is completed, the USBP temporarily detains any alien who is referred for removal proceedings. Once the USBP determines that an alien should be placed in expedited-removal proceedings, the alien is expeditiously transferred to ICE custody in compliance with federal law. The distance between ICE detention facilities and USBP stations, however, varies. Asylum officers and immigration judges review negative credible-fear findings during expedited-removal proceedings while the alien is in ICE custody.

By contrast, CBP officers are able to employ a more orderly and streamlined process for inadmissible aliens who present at one of the ports of entry along the southern border—even if they claim a credible fear. Because such aliens have typically sought admission without violating the law, CBP generally does not need to dedicate resources to apprehending or considering whether to charge such aliens. And while aliens who present at a port of entry undergo threshold screening to determine their admissibility, *see* INA 235(b)(2), 8 U.S.C. 1225(b)(2), that process takes approximately the same amount of time as CBP's process for obtaining details from aliens apprehended between ports of entry. Just as for illegal entrants, CBP officers at ports of entry must decide whether inadmissible aliens at ports of entry are subject to expedited removal. Aliens subject to such proceedings are then generally transferred to ICE custody so that DHS can implement Congress's statutory mandate to detain such aliens during the pendency of expedited-removal proceedings. As with stations, ports of entry vary in their proximity to ICE detention facilities.

The Departments acknowledge that in the event all of the approximately 70,000 aliens per year who cross illegally and assert a credible fear instead decide to present at a port of entry, processing times at ports of entry would be slower in the absence of additional resources or policies that would encourage aliens to enter at less busy ports. Using FY 2018 figures, the number of aliens presenting at a port of entry would rise from about 124,511 to about 200,000 aliens if all illegal aliens who assert a credible fear went to ports of entry. That would likely create longer lines at U.S. ports of entry, although the Departments note that such ports have variable capacities and that wait times vary considerably between them. The Departments nonetheless believe such a policy would be preferable to the status quo. Nearly 40% of inadmissible aliens who present at ports of entry today are Mexican nationals, who rarely claim a credible fear and who accordingly can be processed and admitted or removed quickly.

Furthermore, the overwhelming number of aliens who would have an incentive under the rule and a proclamation to arrive at a port of entry rather than to cross illegally are from third countries, not from Mexico. In FY 2018, CBP apprehended and referred to expedited removal an estimated 87,544 Northern Triangle nationals and an estimated 66,826 Mexican nationals, but Northern Triangle nationals assert a credible fear over 60% of the time, whereas Mexican nationals assert a credible fear less than 10% of the time. The Departments believe that it is reasonable for third-country aliens, who appear highly unlikely to be persecuted on account of a protected ground or tortured in Mexico, to be subject to orderly processing at ports of entry that takes into account resource constraints at ports of entry and in U.S. detention facilities. Such orderly processing would be impossible if large proportions of third-country nationals continue to cross the southern border illegally.

To be sure, some Mexican nationals who would assert a credible fear may also have to spend more time waiting for processing in Mexico. Such nationals, however, could still obtain statutory withholding of removal or CAT protection if they crossed illegally, which would allow them a safeguard against persecution. Moreover, only 178 Mexican nationals received asylum in FY 2018 after initially asserting a credible fear of persecution in expedited-removal proceedings, indicating that the category of Mexican nationals most likely to be affected by the rule and a proclamation would also be highly unlikely to establish eligibility for asylum.

**Regulatory Requirements**

*A. Administrative Procedure Act*

While the Administrative Procedure Act (''APA'') generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** for a period of public comment, it provides an exception ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). This exception relieves agencies of the notice-and-comment requirement in emergency situations, or in circumstances where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), *aff'd,* 925 F.2d 1454 (Fed. Cir. 1991); *see also Nat'l Fed'n of Federal Emps.* v. *Nat'l Treasury Emps. Union,* 671 F.2d 607, 611 (D.C. Cir. 1982); *United States* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010). Agencies have previously relied on this exception in promulgating a host of immigration-related interim rules.[13] Furthermore, DHS has invoked this exception in promulgating rules related to expedited removal—a context in which Congress recognized the need for dispatch in addressing large volumes of aliens by giving the Secretary significant discretion to ''modify at any time'' the classes of aliens who would be subject to such procedures. *See* INA 235(b)(1)(A)(iii)(I), 8 U.S.C. 1225(b)(1)(A)(iii)(I).[14]

[13] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require additional documentation from certain Caribbean agricultural workers to avoid ''an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule''); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule claiming good cause exception for suspending certain automatic registration requirements for nonimmigrants because ''without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews'' over six months).

[14] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR at 4770 (claiming good cause exception because the ability to detain certain Cuban nationals ''while admissibility and identity are

Continued

The Departments have concluded that the good-cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule. Notice and comment on this rule, along with a 30-day delay in its effective date, would be impracticable and contrary to the public interest. The Departments have determined that immediate implementation of this rule is essential to avoid creating an incentive for aliens to seek to cross the border during pre-promulgation notice and comment under 5 U.S.C. 553(b) or during the 30-day delay in the effective date under 5 U.S.C. 553(d).

DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[] human life and hav[e] a potential destabilizing effect in the region.'' Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR at 4770. DHS in particular cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' *Id.* DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' *Id.* DHS concluded: ''[A] surge could result in significant loss of human life.'' *Id.; accord, e.g.,* Designating Aliens For Expedited Removal, 69 FR 48877 (noting similar destabilizing incentives for a surge during a delay in the effective date); Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR at 5907 (finding the good-cause exception applicable because of similar short-run incentive concerns).

These same concerns would apply here as well. Pre-promulgation notice and comment, or a delay in the effective date, could lead to an increase in migration to the southern border to enter the United States before the rule took effect. For instance, the thousands of aliens who presently enter illegally and make claims of credible fear if and when they are apprehended would have an added incentive to cross illegally during the comment period. They have an incentive to cross illegally in the hopes of evading detection entirely. Even once apprehended, at present, they are able to take advantage of a second opportunity to remain in the United States by making credible-fear claims in expedited-removal proceedings. Even if their statements are ultimately not found to be genuine, they are likely to be released into the interior pending section 240 proceedings that may not occur for months or years. Based on the available statistics, the Departments believe that a large proportion of aliens who enter illegally and assert a fear could be released while awaiting section 240 proceedings. There continues to be an ''urgent need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations.'' Designating Aliens For Expedited Removal, 69 FR at 48878.

Furthermore, there are already large numbers of migrants—including thousands of aliens traveling in groups, primarily from Central America—expected to attempt entry at the southern border in the coming weeks. Some are traveling in large, organized groups through Mexico and, by reports, intend to come to the United States unlawfully or without proper documentation and to express an intent to seek asylum. Creating an incentive for members of those groups to attempt to enter the United States unlawfully before this rule took effect would make more dangerous their already perilous journeys, and would further strain CBP's apprehension operations. This interim rule is thus a practical means to address these developments and avoid creating an even larger short-term influx; an extended notice-and-comment rulemaking process would be impracticable.

Alternatively, the Departments may forgo notice-and-comment procedures and a delay in the effective date because this rule involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). The flow of aliens across the southern border, unlawfully or without appropriate travel documents, directly implicates the foreign policy interests of the United States. *See, e.g.,* Exec. Order 13767 (Jan. 25, 2017). Presidential proclamations invoking section 212(f) or 215(a)(1) of the INA at the southern border necessarily implicate our relations with Mexico and the President's foreign policy, including sensitive and ongoing negotiations with Mexico about how to manage our shared border.[15] A proclamation under section 212(f) of the INA would reflect a presidential determination that some or all entries along the border ''would [be] detrimental to the interests of the United States.'' And the structure of the rule, under which the Attorney General and the Secretary are exercising their statutory authority to establish a mandatory bar to asylum eligibility resting squarely on a proclamation issued by the President, confirms the direct relationship between the President's foreign policy decisions in this area and the rule.

For instance, a proclamation aimed at channeling aliens who wish to make a claim for asylum to ports of entry at the southern border would be inextricably related to any negotiations over a safe-third-country agreement (as defined in INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A)), or any similar arrangements. As noted, the vast majority of aliens who enter illegally today come from the Northern Triangle countries, and large portions of those aliens assert a credible fear. Channeling those aliens to ports of entry would encourage these aliens to first avail themselves of offers of asylum from Mexico.

Moreover, this rule would be an integral part of ongoing negotiations with Mexico and Northern Triangle countries over how to address the influx of tens of thousands of migrants from Central America through Mexico and into the United States. For instance, over the past few weeks, the United States has consistently engaged with the Security and Foreign Ministries of El Salvador, Guatemala, and Honduras, as well as the Ministries of Governance and Foreign Affairs of Mexico, to

determined and protection claims are adjudicated, as well as to quickly remove those without protection claims or claims to lawful status, is a necessity for national security and public safety''); Designating Aliens For Expedited Removal, 69 FR at 48880 (claiming good cause exception for expansion of expedited-removal program due to ''[t]he large volume of illegal entries, and attempted illegal entries, and the attendant risks to national security presented by these illegal entries,'' as well as ''the need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations'').

[15] For instance, since 2004, the United States and Mexico have been operating under a memorandum of understanding concerning the repatriation of Mexican nationals. Memorandum of Understanding Between the Department of Homeland Security of the United States of America and the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States, on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals (Feb. 20, 2004). Article 6 of that memorandum reserves the movement of third-country nationals through Mexico and the United States for further bilateral negotiations.

discuss how to address the mass influx of aliens traveling together from Central America who plan to seek to enter at the southern border. Those ongoing discussions involve negotiations over issues such as how these other countries will develop a process to provide this influx with the opportunity to seek protection at the safest and earliest point of transit possible, and how to establish compliance and enforcement mechanisms for those who seek to enter the United States illegally, including for those who do not avail themselves of earlier offers of protection. Furthermore, the United States and Mexico have been engaged in ongoing discussions of a safe-third-country agreement, and this rule will strengthen the ability of the United States to address the crisis at the southern border and therefore facilitate the likelihood of success in future negotiations.

This rule thus supports the President's foreign policy with respect to Mexico and the Northern Triangle countries in this area and is exempt from the notice-and-comment and delayed-effective-date requirements in 5 U.S.C. 553. *See Am. Ass'n of Exporters & Importers-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting that foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country''); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

Invoking the APA's foreign affairs exception is also consistent with past rulemakings. In 2016, for example, in response to diplomatic developments between the United States and Cuba, DHS changed its regulations concerning flights to and from the island via an immediately effective interim final rule. This rulemaking explained that it was covered by the foreign affairs exception because it was ''consistent with U.S. foreign policy goals''—specifically, the ''continued effort to normalize relations between the two countries.'' Flights to and From Cuba, 81 FR 14948, 14952 (Mar. 21, 2016). In a similar vein, DHS and the State Department recently provided notice that they were eliminating an exception to expedited removal for certain Cuban nationals. The notice explained that the change in policy was subject to the foreign affairs exception because it was ''part of a major foreign policy initiative announced by the President, and is central to ongoing diplomatic discussions between the United States and Cuba with respect to travel and migration between the two countries.'' Eliminating Exception To Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 FR at 4904–05.

For the foregoing reasons, taken together, the Departments have concluded that the foreign affairs exemption to notice-and-comment rulemaking applies.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

*C. Unfunded Mandates Reform Act of 1995*

This interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*D. Congressional Review Act*

This interim final rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*E. Executive Order 12866, Executive Order 13563, and Executive Order 13771 (Regulatory Planning and Review)*

This interim final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 because the rule is exempt under the foreign-affairs exemption in section 3(d)(2) as part of the actual exercise of diplomacy. The rule is consequently also exempt from Executive Order 13771 because it is not a significant regulatory action under Executive Order 12866. Though the potential costs, benefits, and transfers associated with some proclamations may have any of a range of economic impacts, this rule itself does not have an impact aside from enabling future action. The Departments have discussed what some of the potential impacts associated with a proclamation may be, but these impacts do not stem directly from this rule and, as such, they do not consider them to be costs, benefits, or transfers of this rule.

This rule amends existing regulations to provide that aliens subject to restrictions on entry under certain proclamations are ineligible for asylum. The expected effects of this rule for aliens and on the Departments' operations are discussed above. As noted, this rule will result in the application of an additional mandatory bar to asylum, but the scope of that bar will depend on the substance of relevant triggering proclamations. In addition, this rule requires DHS to consider and apply the proclamation bar in the credible-fear screening analysis, which DHS does not currently do. Application of the new bar to asylum will likely decrease the number of asylum grants. By applying the bar earlier in the process, it will lessen the time that aliens who are ineligible for asylum and who lack a reasonable fear of persecution or torture will be present in the United States. Finally, DOJ is amending its regulations with respect to aliens who are subject to the proclamation bar to asylum eligibility to ensure that aliens who establish a reasonable fear of persecution or torture may still seek, in proceedings before immigration judges, statutory withholding of removal under the INA or CAT protection.

*Executive Order 13132 (Federalism)*

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*F. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*G. Paperwork Reduction Act*

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

**List of Subjects**

*8 CFR Part 208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 1003*

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

*8 CFR Part 1208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

**Regulatory Amendments**

## DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

## PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as fol1ows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229, 8 CFR part 2.

■ 2. In § 208.13, add paragraph (c)(3) to read as follows:

**§ 208.13 Establishing asylum eligibility.**

* * * * *

(c) * * *

(3) *Additional limitation on eligibility for asylum.* For applications filed after November 9, 2018, an alien shall be ineligible for asylum if the alien is subject to a presidential proclamation or other presidential order suspending or limiting the entry of aliens along the southern border with Mexico that is issued pursuant to subsection 212(f) or 215(a)(1) of the Act on or after November 9, 2018 and the alien enters the United States after the effective date of the proclamation or order contrary to the terms of the proclamation or order. This limitation on eligibility does not apply if the proclamation or order expressly provides that it does not affect eligibility for asylum, or expressly provides for a waiver or exception that makes the suspension or limitation inapplicable to the alien.

■ 3. In § 208.30, revise the section heading and add a sentence at the end of paragraph (e)(5) to read as follows:

**§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.**

* * * * *

(e) * * *

(5) * * * If the alien is found to be an alien described in 8 CFR 208.13(c)(3), then the asylum officer shall enter a negative credible fear determination with respect to the alien's application for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture if the alien establishes a reasonable fear of persecution or torture. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

* * * * *

Approved:

Dated: November 5, 2018.

**Kirstjen M. Nielsen,**

*Secretary of Homeland Security.*

## DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General amends 8 CFR parts 1003 and 1208 as follows:

## PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 4. The authority citation for part 1003 continues to read as follows:

**Authority:** 5 U.S.C. 301; 6 U.S.C 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 5. In § 1003.42, add a sentence at the end of paragraph (d) to read as follows:

**§ 1003.42 Review of credible fear determination.**

* * * * *

(d) * * * If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) prior to any further review of the asylum officer's negative determination.

* * * * *

## PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 6. The authority citation for part 1208 continues to read as fol1ows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 7. In § 1208.13, add paragraph (c)(3) to read as follows:

**§ 1208.13 Establishing asylum eligibility.**

* * * * *

(c) * * *

(3) *Additional limitation on eligibility for asylum.* For applications filed after November 9, 2018, an alien shall be ineligible for asylum if the alien is subject to a presidential proclamation or other presidential order suspending or limiting the entry of aliens along the southern border with Mexico that is issued pursuant to subsection 212(f) or 215(a)(1) of the Act on or after November 9, 2018 and the alien enters the United States after the effective date of the proclamation or order contrary to the terms of the proclamation or order. This limitation on eligibility does not apply if the proclamation or order expressly provides that it does not affect eligibility for asylum, or expressly provides for a waiver or exception that makes the suspension or limitation inapplicable to the alien.

■ 8. In § 1208.30, revise the section heading and add paragraph (g)(1) to read as follows:

**§ 1208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act or whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act.**

* * * * *

(g) * * *

(1) *Review by immigration judge of a mandatory bar finding.* If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3). If the immigration judge finds that the alien is not described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

* * * * *

Dated: November 6, 2018.

**Jefferson B. Sessions III,**

*Attorney General.*

[FR Doc. 2018–24594 Filed 11–8–18; 4:15 pm]

**BILLING CODE 4410–30–P; 9111–97–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0589; Product Identifier 2018–NM–021–AD; Amendment 39–19489; AD 2018–23–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by reports of false resolution advisories (RAs) from certain traffic collision avoidance systems (TCASs). This AD requires modification or replacement of certain TCAS processors. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 14, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2018.

**ADDRESSES:** For service information identified in this final rule, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; phone: 602–365–5535; fax: 602–365–5577; internet: *http://www.honeywell.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0589.

### 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–2018–0589; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Steven Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on July 10, 2018 (83 FR 31911). The NPRM was prompted by reports of false RAs from certain TCASs. The NPRM proposed to require modification or replacement of certain TCAS processors.

We are issuing this AD to address the occurrence of false RAs from the TCAS, which could lead to a loss of separation from other airplanes, possibly resulting in a mid-air collision.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0196, dated October 5, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> Since 2012, a number of false TCAS resolution advisories (RA) have been reported by various European Air Navigation Service Providers. EASA has published certification guidance material for collision avoidance systems (AMC 20–15) which defines a false TCAS RA as an RA that is issued, but the RA condition does not exist. It is possible that more false (or spurious) RA events have occurred, but were not recorded or reported. The known events were mainly occurring on Airbus single-aisle (A320 family) aeroplanes, although several events have also occurred on Airbus A330 aeroplanes. Investigation determined that the false RAs are caused on aeroplanes with a Honeywell TPA–100B TCAS processor installed, P/N [part number] 940–0351–001. This was caused by a combination of three factors: (1) Hybrid surveillance enabled; (2) processor connected to a hybrid GPS [global positioning system] source, without a direct connection to a GPS source; and (3) an encounter with an intruder aeroplane with noisy (jumping) ADS–B Out position.
>
> EASA previously published Safety Information Bulletin (SIB) 2014–33 to inform owners and operators of affected aeroplanes about this safety concern. At that time, the false RAs were not considered an unsafe condition. Since the SIB was issued, further events have been reported, involving a third aeroplane.
>
> This condition, if not corrected, could lead to a loss of separation with other aeroplanes, possibly resulting in a mid-air collision.
>
> Prompted by these latest findings, and after review of the available information, EASA reassessed the severity and rate of occurrence of false RAs and has decided that mandatory action must be taken to reduce the rate of occurrence, and the risk of loss of separation with other aeroplanes. Honeywell International Inc. published Service Bulletin

(SB) 940–0351–34–0005 [Publication Number D201611000002] to provide instructions for an upgrade, introducing software version 05/01, changing the processor unit to P/N 940–0351–005.

EASA previously issued AD 2017–0091 (later revised) to address the unsafe condition on aeroplanes that had the P/N 940–0351–001 processor installed by Airbus major change or SB. However, part of the fleet had the same P/N installed by STC [supplemental type certificate]. The relevant STC approval holders (see section Remarks of this [EASA] AD for contact details) have been notified and modification instructions (see section Ref. Publications of this [EASA] AD) can be obtained from those companies.

For the reason described above, this [EASA] AD requires modification or replacement of Honeywell TPA–100B P/N 940–0351–001 TCAS processors. This [EASA] AD also prohibits installation of those processors on post-mod aeroplanes.

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–2018–0589.

**Comments**

We gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response to that comment.

**Request To Withdraw the NPRM**

Delta Air Lines (DAL) observed that the proposed AD is redundant to AD 2018–06–01, Amendment 39–19221 (83 FR 12852, March 26, 2018) (''AD 2018–06–01''), because they both address the modification or replacement of a TCAS processor. We infer a request to withdraw the NPRM.

We disagree because this AD pertains to aircraft that have had their TCAS processor modified by an FAA-validated supplemental type certificate (STC), whereas AD 2018–06–01 pertains to the aircraft type certificate (TC) and the TCAS processor modification required by that AD does not include airplanes modified by an FAA STC. We have made no change to this AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Related Service Information Under 1 CFR Part 51**

H4 Aerospace has issued Service Bulletin H4ASB009, Issue 1, dated September 18, 2017; and PMV Engineering has issued Service Bulletin AVI–00690–SB–S99–R01, Revision 01, dated October 5, 2017. This service information, provided by the applicable design change FAA STC approval holders, describes the modification or replacement of the Honeywell TPA–100B TCAS processor. These documents are distinct because they apply to airplanes having different STCs installed. 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.

**Other Related Service Information**

Honeywell International, Inc., has issued Service Bulletin 940–0351–34–0005, Revision 2, dated December 1, 2017. This service information describes procedures for updating the software of the Honeywell TPA–100B TCAS processor either on the airplane or at an authorized service center.

**Costs of Compliance**

We estimate that this AD affects 1209 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Modification | 1 work-hour × $85 per hour = $85 | Up to $1,623 | Up to $1,708 | Up to $2,064,972. |

ESTIMATED COSTS FOR OPTIONAL ACTIONS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | 1 work-hour × $85 per hour = $85 | $121,993 | $122,078 |

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

**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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

(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.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2018–23–03 Airbus SAS:** Amendment 39–19489; Docket No. FAA–2018–0589; Product Identifier 2018–NM–021–AD.

**(a) Effective Date**

This AD is effective December 14, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, if modified by H4 Aerospace Supplemental Type Certificate (STC) ST03708NY or PMV Engineering STC ST03835NY.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 34, Navigation.

**(e) Reason**

This AD was prompted by reports of false resolution advisories (RAs) from certain traffic collision avoidance systems (TCASs). We are issuing this AD to address the occurrence of false RAs from the TCAS, which could lead to a loss of separation from other airplanes, possibly resulting in a mid-air collision.

**(f) Compliance**

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

**(g) Definition of an Affected TCAS Processor**

For the purposes of this AD, an affected TCAS processor is defined as a Honeywell TPA–100B TCAS processor having part number (P/N) 940–0351–001.

**(h) Modification or Replacement of TCAS Processor**

Within 12 months after the effective date of this AD: Update the software of the affected TCAS processor and change the part number to P/N 940–0351–005, or replace the affected TCAS processor with a TPA–100B TCAS processor P/N 940–0351–005, in accordance with the Accomplishment Instructions of H4 Aerospace Service Bulletin H4ASB009, Issue 1, dated September 18, 2017; or PMV Engineering Service Bulletin AVI–00690–SB–S99–R01, Revision 01, dated October 5, 2017; as applicable.

**Note 1 to paragraph (h) of this AD:** Guidance for accomplishing the actions required by paragraph (h) of this AD can be found in Honeywell Service Bulletin 940–0351–34–0005, Revision 2, dated December 1, 2017.

**(i) Parts Installation Prohibition**

After modification or replacement of the TCAS processor as required by paragraph (h) of this AD, no person may install on that airplane an affected TCAS processor, as defined in paragraph (g) of this AD.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0196, dated October 5, 2017, 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–2018–0589.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

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

**(l) Material Incorporated by Reference**

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

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

(i) H4 Aerospace Service Bulletin H4ASB009, Issue 1, dated September 18, 2017.

(ii) PMV Engineering Service Bulletin AVI–00690–SB–S99–R01, Revision 01, dated October 5, 2017.

(3) For service information identified in this AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; phone: 602–365–5535; fax: 602–365–5577; internet: *http://www.honeywell.com.*

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

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

Issued in Des Moines, Washington, on October 26, 2018.

**Michael Kaszycki,**

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

[FR Doc. 2018–24394 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

**[Docket No. 170315274–7274–01]**

**RIN 0648–BG73**

## Vessel and Aircraft Discharges From United States Coast Guard in Greater Farallones and Cordell Bank National Marine Sanctuaries

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** With this final rule, the National Oceanic and Atmospheric Administration (NOAA) is allowing the United States Coast Guard (USCG or Coast Guard) to carry out certain otherwise prohibited activities within waters of Greater Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) beyond approximately 3 nautical miles (nm) from the shore, in the areas of the sanctuaries that were expanded in 2015. This final rule will further the ability of the USCG to complete its mission requirements and NOAA's policy of facilitating uses of the sanctuaries to the extent compatible with resource protection. There is no change to the regulatory prohibitions or exceptions applicable to the pre-expansion boundaries of the two sanctuaries. NOAA published a proposed rule and draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) on November 22, 2017. NOAA received written and oral public comments on the proposed rule and draft EA, and NOAA considers and responds to the comments in this final rule and the final EA.

**DATES:** This final rule is effective on December 10, 2018.

**ADDRESSES:** Copies of the final EA described in this rule and the Finding of No Significant Impact (FONSI) are available upon written request from Maria Brown, Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129. Copies of the final EA and the final rule can also be viewed or downloaded at *https://farallones.noaa.gov/manage/regulations.html* or at *www.regulations.gov* (search for docket NOAA–NOS–2017–0140).

**FOR FURTHER INFORMATION CONTACT:** Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at *Maria.Brown@noaa.gov* or 415–561–6622.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose of Regulatory Change

*A. Introduction*

On March 12, 2015, NOAA expanded the boundaries of GFNMS and CBNMS to an area north and west of their previous boundaries. In that rule, pursuant to a request from the USCG, NOAA announced that it would postpone the effective date for the discharge requirements in both expansion areas (defined as the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively) with regard to USCG activities. The purpose of the postponement was to look at ways to address Coast Guard's concerns that the discharge regulations would impair the operations of Coast Guard vessels in, and aircraft over, the sanctuaries, and to consider, among other things, whether to exempt Coast Guard activities in both sanctuary expansion areas. This final rule allows the USCG to carry out otherwise prohibited discharges within waters of the expansion areas of GFNMS and CBNMS seaward of approximately 3 nm from the shore, as described in more detail below.[1] In formulating this final rule, NOAA considered a number of factors discussed more fully in the final EA, including the ability of the USCG to complete its mission requirements and the policy of facilitating uses of the sanctuaries to the extent compatible with resource protection.

*B. Greater Farallones and Cordell Bank National Marine Sanctuaries*

NOAA is charged with managing areas of the marine environment that are of special national significance as the National Marine Sanctuary System (16 U.S.C. 1431(b)(1)). The Office of National Marine Sanctuaries (ONMS) is the federal office within NOAA that manages the National Marine Sanctuary System (System). The mission of ONMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the System for this and future generations throughout the nation. This System includes 13 national marine sanctuaries, among them GFNMS and CBNMS. ONMS also manages Papahānaumokuākea and Rose Atoll marine national monuments. GFNMS was designated in 1981 and protects approximately 3,295 square miles (2,488 square nm). CBNMS was designated in 1989 and protects approximately 1,286 square miles (971 square nm). NOAA expanded both sanctuaries to their current size on March 12, 2015 (80 FR 13078). When referring to the expansion areas of the sanctuaries, NOAA means the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively.

Both GFNMS and CBNMS regulations prohibit discharging or depositing, from within or into the sanctuary, any material or other matter (15 CFR 922.82(a)(2), (3) and 15 CFR 922.112(a)(2)(i) and (ii)). Both GFNMS and CBNMS regulations also prohibit discharging or depositing, from beyond the boundary of the sanctuary, any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality (15 CFR 922.82(a)(4); 15 CFR 922.112(a)(2)(iii)). Most national marine sanctuaries have similar regulatory prohibitions. The discharge prohibitions are aimed at maintaining and improving water quality within national marine sanctuaries to enhance conditions for their living marine resources. The discharge prohibitions include the following exceptions relevant to the final action:

- For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device that is approved in accordance with section 312 of the Federal Water Pollution Control Act,[2] as amended (FWPCA); vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B));
- For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding tank capacity to hold

[1] The specific boundary lines that designate the areas where the new discharge exceptions for certain USCG activities applies are identified by coordinates included in appendices to the regulatory text.

[2] The Federal Water Pollution Control Act is more commonly referred to as the Clean Water Act.

graywater while within the sanctuary, clean graywater as defined by section 312 of the FWPCA (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D));

- Activities necessary to respond to an emergency threatening life, property or the environment (15 CFR 922.82(c) and 922.112(b));
- Activities allowed in accordance with national marine sanctuary permits (15 CFR 922.82(d) and 922.112(d)).

The following definitions apply to these exceptions:

- ''Clean'' means not containing detectable levels of a harmful matter (15 CFR 922.81 and 922.111); and,
- ''Graywater'' means galley, bath, and shower water (33 U.S.C. 1322(a)(11)).

The first two existing discharge exceptions listed above apply to all vessels other than cruise ships. Therefore, upon finalization of this rulemaking, they will continue to apply to existing or future USCG vessels with appropriate marine sanitation devices (MSDs) on board.

*C. USCG Activities*

The USCG, part of the U.S. Department of Homeland Security, is a military service and a branch of the armed forces (14 U.S.C. 1), charged with carrying out eleven maritime safety, security and stewardship missions (6 U.S.C. 468(a)).

One of the missions of the USCG is to enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. As part of this mission, the USCG supports resource protection efforts within GFNMS and CBNMS by providing surveillance of activities within the sanctuaries and enforcement of the National Marine Sanctuaries Act (NMSA) and other laws and their implementing regulations. The USCG has the authority to enforce the NMSA under 14 U.S.C. 2 and 14 U.S.C. 89. Law enforcement activities for the two sanctuaries are also conducted by other agencies, primarily NOAA's Office of Law Enforcement and the California Department of Fish and Wildlife. In GFNMS, the National Park Service and several local agencies also assist with law enforcement activities.

The USCG also leads incident planning and response activities for oil spills and other incidents in U.S. coastal and ocean waters. These activities are necessary components of GFNMS and CBNMS management. Other USCG missions conducted inside national marine sanctuary boundaries, some of which also support national marine sanctuary management, include waterways and coastal security; aids to navigation, including tending buoys; search and rescue (SAR); living marine resources; marine safety; and marine environmental protection. The USCG may concurrently conduct activities to support more than one of its missions when operating vessels within or aircraft above GFNMS and CBNMS.

According to the USCG Environmental Vessel Manual, USCG practices allow for discharges of untreated sewage and non-clean graywater from USCG vessels in waters beyond 3 nm from shore. USCG vessels have continued these discharges beyond 3 nm from shore in the expansion areas of GFNMS and CBNMS, due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities in the expansion areas of GFNMS and CBNMS while NOAA assessed these activities and their potential environmental effects.

According to other regulatory requirements and USCG guidance and practices, vessel discharges are not allowed to take place within approximately 3 nm of the shore. The FWPCA requires (in section 312) that vessels with installed toilets must only discharge sewage through a Type I or II marine sanitation device within three miles [3] of shore (33 U.S.C. 1322(h)(4); 33 U.S.C. 1362(7)–(8)). The California Harbors and Navigation Code 775(a)(2) and (b) require compliance with the FWPCA. There is also a U.S. Environmental Protection Agency (USEPA) designated No Discharge Zone (NDZ) prohibiting sewage discharges in the marine waters of the state that applies to specified vessels of 300 gross tons or greater,[4] which would apply to several classes of USCG vessels. Further, the USCG Vessel Environmental Manual includes a restriction on discharging raw sewage within 3.5 miles (3 nm) of land.

*D. Need for Action*

In the course of the rulemaking to expand GFNMS and CBNMS, NOAA received a letter dated February 4, 2013, from the USCG stating that the then-proposed prohibitions for the GFNMS and CBNMS expansion areas had the potential to jeopardize their ability to stay ''mission ready'' and would impair USCG surface and airborne use of force training activities, and SAR training activities. Of specific concern to the USCG were the then-proposed prohibitions on vessel sewage discharge and the ability of Coastal Patrol Boats to conduct any mission within the sanctuaries, in particular law enforcement and SAR missions.

Following the publication of the proposed rule for the expansion (79 FR 20981), NOAA and USCG conducted interagency consultation to address the issue brought up during scoping. In a letter dated February 9, 2015, USCG communicated to the Office of Information and Regulatory Affairs at the White House Office of Management and Budget that they were prepared to discuss the possibility of a regulatory exception with NOAA after publication of the final rule to expand the sanctuaries. To accommodate the need for these USCG activities to take place after the expansion rule entered into effect, NOAA postponed, for six months from the effective date of the rule, the applicability of the discharge requirements to Coast Guard activities in both expanded areas. NOAA published the final rule for the expansion of GFNMS and CBNMS on March 12, 2015 (80 FR 13078), in the **Federal Register** and the rule became effective on June 9, 2015 (80 FR 34047). Additional six-month postponements of the effectiveness of the discharge requirements in the expansion areas were published in the **Federal Register** on December 1, 2015 (80 FR 74985), May 31, 2016 (81 FR 34268), December 6, 2016 (81 FR 87803), and June 7, 2017 (82 FR 26339) to enable completion of the environmental assessment and to determine NOAA's next steps. Another postponement of the effectiveness of the discharge requirements in the expansion areas (82 FR 55502) was published concurrently with the proposed rule (82 FR 55529) and draft environmental assessment, on November 22, 2017. The November 22, 2017 postponement extends the discharge requirements for the USCG activities in the expansion areas until December 9, 2018 or 30 days after this final rule publishes, whichever comes first, to provide adequate time for completion of a final EA and final rule, as appropriate. Therefore, the postponement of the discharge requirements will be superseded on the date this final rule is effective, 30 days after publication in the **Federal Register**.

Of primary concern to USCG, prior to this final rule becoming effective, has been the discharge regulations in both expanded sanctuaries and USCG compliance with these regulations.

[3] The FWPCA refers to ''miles'' but the common interpretation is ''nautical miles'', as statute miles are not used by mariners, and many states use a 3 nm from shore boundary (*http://www.gc.noaa.gov/gcil_seaward.html*).

[4] Various laws and regulations refer to gross tons or gross registered tons (GRT). In this document, NOAA uses the terms exactly as they appear in the specific legal source cited.

USCG vessels have limited capacity to treat sewage and some have limited capacity to hold sewage and graywater, and are without Type I or II marine sanitation devices onboard to treat the wastewater prior to discharge. Accordingly, the discharges from such vessels would not fit within the existing regulatory exemptions for discharge within GFNMS and CBNMS. Training exercises designed to make USCG personnel ready for missions involving use of force and SAR involve discharging live ammunition and pyrotechnic materials. NOAA is concerned with protecting sanctuary resources and habitats, resolving any conflicts that could occur among sanctuary user groups (*e.g.,* fishermen and USCG when conducting live fire training), and ensuring continued USCG enforcement of sanctuary regulations and other mission activities that support sanctuary management.

Prior to the expansion of GFNMS and CBNMS, the USCG was able to comply with the sanctuaries' vessel discharge regulations by discharging untreated vessel sewage and non-clean [5] graywater in ocean waters outside GFNMS and CBNMS or by pumping it out at shoreside pump-out facilities. The expansion of GFNMS and CBNMS, with the resulting larger sizes of the sanctuaries and extension of discharge prohibitions to the expanded portions of the sanctuaries, would have made it difficult for the USCG to both fulfill its missions and comply with the vessel discharge prohibitions. The USCG vessels have constraints for treating and holding sewage and non-clean graywater, and crews would have had to plan for the extra time required to travel from the GFNMS and CBNMS expansion areas to USCG shoreside pump-out facilities in Bodega Bay and San Francisco Bay or to ocean waters outside national marine sanctuary boundaries to discharge vessel holding tanks (where allowed by state and federal regulations).

Similarly, with regard to training activities, prior to the expansion of GFNMS and CBNMS, the USCG planned and conducted these exercises outside the sanctuaries' boundaries and within relatively short distances from USCG stations (*e.g.,* Bodega Bay) without violating sanctuary discharge regulations. Because the USCG maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live-fire and SAR exercises in the areas in which its personnel normally operate, the expansion of GFNMS and CBNMS and extension of discharge prohibitions to the expanded portions of the sanctuaries had the potential to impair the ability of USCG to operate and train to remain ''mission ready''.

*E. History of Action*

Prior to the expansion of the two sanctuaries' boundaries, GFNMS and USCG had been discussing potentially allowing USCG to make discharges within the sanctuary during live fire and SAR training exercises. In 2012 and 2013, USCG District 11 and GFNMS held a series of meetings focused on discharges of flares, ammunition, and targets related to live fire and SAR training. During this time, GFNMS and USCG identified several areas for potentially allowing seasonal training-related discharges, as well as possible operating protocols. The intention was to consider allowing USCG training discharges via a national marine sanctuary permit, if the activities could be conducted in a way that would minimize potential impacts to marine mammals and other living marine resources. The USCG did not submit an application for a permit, and therefore NOAA did not issue a permit.

After receiving the USCG's February 4, 2013 letter, NOAA initiated discussions with the USCG to address the full range of USCG discharges from training activities and untreated vessel sewage and non-clean graywater discharges in both GFNMS and CBNMS. As part of these discussions, the USCG and NOAA reviewed potential environmental effects and various approaches to mitigate potential harm to sanctuary resources from these USCG discharges, including national marine sanctuary permits and best practices for USCG discharge activities. In January 2015, prior to the publication of the final rule to expand GFNMS and CBNMS, NOAA and the USCG entered into interagency consultation to address both agencies' concerns. The details of this consultation are described above under ''Need for Action''.

From April 21 to May 31, 2016 (81 FR 23445), NOAA accepted public comments and information to determine the relevant scope of issues and range of alternatives for NOAA to address in the environmental assessment and proposed rule. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at three public meetings that were held in Sausalito, Bodega Bay and Gualala on May 10, 11 and 12, 2016, respectively. Comments received are available at *www.regulations.gov* (search for docket NOAA–NOS–2017–0140). NOAA considered these comments in preparing the proposed rule and associated draft EA, which were published on November 22, 2017.

From November 22, 2017 to January 15, 2018 (82 FR 55529), NOAA accepted public comments on the draft EA and proposed rule for this action. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at two public meetings that were held in Sausalito and Gualala, CA on December 5 and 13, 2017, respectively. Comments received are available at *www.regulations.gov* (search for docket NOAA–NOS–2017–0140). NOAA considered these comments in preparing this final rule and associated final EA, and NOAA provides responses to these comments in these documents.

*F. Process*

The process for this action is composed of four major stages: (1) Information collection and characterization and public scoping; (2) preparation and release of a draft environmental assessment under the National Environmental Policy Act (NEPA), and any proposed amendments to the regulations if appropriate; (3) public review and comment of the proposed amendments and the draft environmental assessment; (4) preparation and release of a final environmental review document, and any final amendments to the GFNMS and CBNMS regulations, if appropriate. With the publication of this final rule, NOAA completes the fourth phase of this process.

NOAA fulfilled its responsibilities to complete required consultations and/or receive necessary authorizations under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*), Section 7 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101), and Federal Consistency review under the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*), along with its ongoing NEPA (42 U.S.C. 4321 *et seq.*) process including the use of NEPA documents and public meetings, to also meet the requirements of other federal laws (See Section IV below). Together with this final rule, NOAA is releasing a final EA containing more detailed information on the considerations of this action, including assessment of alternatives, analysis of potential environmental impacts, and references. NOAA has prepared a FONSI for this action. The EA can be found on the website and the EA and FONSI can be

[5] Here and thereafter, ONMS intends to refer to graywater that does not meet the definition of ''clean'', defined as not containing any detectable levels of a harmful matter (15 CFR 922.111), as non-clean graywater.

obtained from the official listed in the **FOR FURTHER INFORMATION CONTACT** section above.

## II. Summary of the Regulatory Change

### *A. Sewage and Graywater*

With this final rule, NOAA amends the regulations for GFNMS and CBNMS to allow USCG vessels to discharge untreated sewage and non-clean graywater only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of a line, approximately [6] 3.5 miles (3 nautical miles (nm)) from the shoreline, that is designated in coordinates included in appendices to the regulatory text. USCG discharges of untreated sewage and non-clean graywater from vessels that are not equipped with a Type I or II MSD and without sufficient holding tank capacity will be allowed to continue, as per historic and current routine USCG operational practices in waters of both expansion areas beyond 3 nm from shore. As previously described, these discharges have continued since June 2015 due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities while NOAA assessed these activities, alternatives, and their potential environmental effects.

The existing GFNMS and CBNMS discharge prohibitions provide an exception for clean sewage discharge (''clean effluent'') through a Type I or II MSD for: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B)). They also provide an exception for clean graywater to be discharged from: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the Sanctuary (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D)). According to the USCG, its vessels operating in GFNMS and CBNMS are without Type I or II MSDs onboard to treat sewage or sewage mixed with graywater, prior to discharge. Some classes of USCG vessels also have limited capacity to hold sewage and non-clean graywater until it may be discharged outside GFNMS and CBNMS, or pumped out at an onshore disposal facility. Thus, if the 2015 regulations had taken effect in the expansion areas of GFNMS and CBNMS, the vessels would not have been able to legally discharge in those portions of the sanctuaries in a manner consistent with these existing regulatory exceptions. The USCG discharge exceptions to the GFNMS and CBNMS prohibitions contained in this final rule are in addition to the existing exceptions noted earlier.

The areas within GFNMS and CBNMS in which these USCG vessel discharges are excepted from the sanctuaries' discharge prohibitions correspond to the waters seaward of approximately 3 nm from shore in the expansion areas of GFNMS and CBNMS (*i.e.,* the areas added when the sanctuaries expanded in 2015). The geographic coordinates of these areas are listed in an appendix to each sanctuary's regulations (appendix G of subpart H for GFNMS and appendix C of subpart K for CBNMS). Aside from the exceptions for USCG training-related discharges (see below), the USCG will be required to continue complying with all other existing prohibitions provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries.

NOAA has made some minor changes to the exceptions to the GFNMS and CBNMS regulatory prohibitions on discharges proposed on November 22, 2017 (82 FR 55529). In the proposed rule, NOAA considered exceptions for ''a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is operating within the designated area [. . .]'' (proposed 15 CFR 922.82(a)(2)(vi) and proposed 15 CFR 922.112(a)(2)(i)(F)). NOAA removed the words ''that is'' in the regulatory text as they were not grammatically necessary. NOAA also clarified in the regulatory text that the ''designated area'' means the portion of the 2015 expansion area for GFNMS specified in Appendix G to Subpart H of Part 922 and the entire 2015 expansion area for CBNMS as specified in Appendix C to Subpart K of Part 922. Though the coordinates for the boundaries of the designated area are presented in table form, adding the term ''2015 expansion area'' in the regulations makes it easier to understand. There are no changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries. Lastly, NOAA is also making a correction to a printing error that inadvertently omitted sub-paragraph 15 CFR 922.82(a)(3) and repeated sub-paragraph 15 CFR 922.82(a)(4) twice in the November 2017 proposed rule.[7] These minor changes to the rule text do not, in practice, expand the exception to cover any additional USCG vessels that currently operate in the expansion areas of GFNMS and CBNMS. Rather, the revision is a minor, technical, and nonsubstantive correction to reduce any confusion about the areas where this new exception would apply. The correction would not substantially change the proposed action, alternatives, or the impact conclusions in a way that would lead to new or different, reasonably foreseeable environmental impacts. For these reasons, NOAA has determined that supplementation of the EA and reissuance of the rule for public comment are not required at this time.

### *B. Discharges of Ammunition and Pyrotechnic Materials During Training*

NOAA amends the GFNMS and CBNMS regulations to allow USCG discharges of ammunition and pyrotechnic materials (including warning projectiles, flares, smoke floats and marine markers) during live ammunition and search and rescue training exercises only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. The geographic coordinates of this designated area, where training discharges are excepted from the sanctuary discharge prohibition within GFNMS and CBNMS, are the same as the coordinates for the designated area for USCG vessel discharges and listed in an appendix to each sanctuary's regulations.

Aside from the previously described exceptions for USCG vessel discharges of untreated sewage and graywater, the USCG will be required to continue complying with all other existing

[6] The designated coordinate points reflect the seaward boundary of ''state waters'', which are herein referred to as approximately 3 nm from the California shoreline. The term ''state waters'' within GFNMS generally refers to the portion of GFNMS from the California shoreline (including around the Farallon Islands) to approximately 3 nm from shore (California Harbors and Navigation Code 775.5[h]; United States of America v. State of California (135 S.Ct. 563 (Mem) (2014) (establishing the seaward boundary of state submerged lands; *http://www.slc.ca.gov/Info/Water_Boundaries.html*)). CBNMS is not located within state waters. While this seaward boundary is fixed, the phrase ''approximately 3 nm from the shoreline'' is used because the exact distance of the coordinate points from the shore may have some slight variation, due to continuing shoreline and sea level changes and different mapping/data conventions. The new regulatory text includes appendices with coordinates to identify the areas where the new discharge exceptions for certain USCG activities apply.

[7] The printing error affected the **Federal Register** formatting of the proposed revised regulation, including duplicating the language of one of the sub-paragraphs, but the printing error did not affect the substance or effect of the proposed regulation as revised. No revisions were proposed within sub-paragraph 15 CFR 922.82(a)(3).

prohibitions—in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries, and will be required to continue complying with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. There are no changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries.

This final rule focuses on regulatory exceptions to the GFNMS and CBNMS general discharge prohibitions for the specified USCG discharges. However, NOAA presents in the final EA a variety of alternatives for protecting sanctuary resources while addressing the USCG's request to allow for USCG's routine discharges of untreated sewage and graywater from vessels and training discharges in GFNMS and CBNMS, allowing the USCG to fulfill its missions, including missions of enforcing the NMSA and other resource protection laws, and comply with the sanctuaries' regulations. The final EA also lays out in more detail NOAA's consideration and analysis of factors pertinent to this final rule. These include the ability of USCG to complete its mission operations and, in the expansion areas of the sanctuaries, constraints in certain USCG vessel capabilities to treat and hold sewage and graywater; the role that USCG live fire and search and rescue trainings in the expansion areas of the sanctuaries play in USCG mission readiness; and the extent to which such USCG activities may be conducted, to the maximum extent feasible, in a manner consistent with the sanctuaries' primary objective of resource protection. This final rule was prepared following consideration of the alternatives and potential environmental impacts discussed in the EA; consideration of the extent to which each alternative would meet the purpose and need of allowing USCG to continue discharging certain materials in the expansion areas of GFNMS and CBNMS, while remaining consistent with sanctuary resource protection and other purposes and policies of the NMSA; and consideration of public comments received on the proposed rule and draft EA. The final regulatory amendments are the same as those NOAA presented for public comment in the proposed rule, with no changes other than a correction to a printing error that repeated one sub-paragraph twice.

## III. Response to Comments

NOAA received 13 comments on the proposed rule and draft environmental assessment during the November 22, 2017 to January 16, 2018 public review period, which are available online at *https://www.regulations.gov/docket?D=NOAA-NOS-2017-0140.* NOAA received comments via online submissions to the regulations.gov website and via oral testimony during a public hearing. Some of the comments contain combined input from multiple individuals on several topics (*e.g.,* two individuals provided oral testimony at one public hearing, as indicated in the comment submitted for the hearing). NOAA grouped the comments into five topic areas with subtopics, which are summarized below, along with NOAA's responses. NOAA did not summarize or respond to three comments that were not relevant to the proposed rule and the draft environmental assessment, and therefore not relevant to this final rule.

*Support USCG Missions*

*Comment:* Expressed support for USCG missions and activities in GFNMS and CBNMS, particularly activities conducted as part of the cooperative relationship with national marine sanctuaries, including law enforcement, monitoring, interdiction, resource protection, marine navigation support, national security readiness, SAR, and emergency oil spill response.

*Response:* NOAA acknowledges and supports the USCG mission to enforce all applicable federal laws within this region and USCG actions supporting NOAA's activities to protect resources and facilitate public and private uses within national marine sanctuaries, compatible with resource protection. In addition, NOAA recognizes that the USCG is charged with conducting a number of other important missions that are not related to the sanctuaries' management.

*Better Justify Necessity of USCG Training Discharges*

*Comment:* NOAA should provide convincing information regarding the necessity to discharge firearms, flares and other training devices within the sanctuaries' expansion areas.

*Response:* The USCG indicated to NOAA that planning and conducting the training exercises involving discharges of ammunition and pyrotechnic materials in the GFNMS and CBNMS expansion areas is logistically and economically preferable to the USCG, allowing USCG personnel to be able to train within relatively short distances from local USCG stations in an environment similar to that of real-life missions. As an example, it would take the 87-foot Coastal Patrol boats based in San Francisco and farther north an average of two to three days to transit to offshore training areas used by the USCG in Southern California, which would extend the duration of a day-long training exercise to almost a week. SAR/pyrotechnics training is an annual requirement for all boat crew members. The USCG states its maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live fire and SAR training exercises in the areas in which their personnel normally operate. The USCG, prior to expansion of GFNMS and CBNMS in 2015 and until the present, has had the ability to conduct training-related discharges in the areas into which the two sanctuaries expanded. Due to the USCG's need to train in the areas in which they would have to conduct actual operations along with other logistical, budgetary, and operational challenges, the USCG has stated that conducting all live fire and SAR trainings in other areas outside the expanded portions of the sanctuaries would affect its ability to maintain mission readiness of its personnel.

*Oppose Regulatory Exceptions*

*Comment:* NOAA should not exempt the discharge of harmful pollutants into national marine sanctuaries. A regulatory exemption has the potential to set an undesirable precedent for future national marine sanctuary management decisions.

*Response:* NOAA's action is specific to the expansion areas of GFNMS and CBNMS, and focuses on USCG discharges that have historically been taking place in those areas. For any proposed action, including one involving a proposed sanctuary expansion or other type of rulemaking, NOAA evaluates the purpose and need, according to the particular geography, marine resources, environmental conditions, human uses, anticipated effects and other factors, on a case-by-case basis. In selecting a final action, NOAA further considers and evaluates, on a case-by-case basis, the proposed action and alternatives in light of public comments received. While previous agency actions may serve to inform future decision-making on similar subjects, they do not predetermine future actions NOAA may make.

*Support for No Action Alternatives*

*Comment:* NOAA should adopt the No Action alternatives, Sewage/Graywater Alternative 3 and Training Alternative 3, which would prohibit untreated sewage, graywater, projectiles, flares, etc. resulting from USCG operations in national marine sanctuaries.

*Response:* Under the No Action alternatives (Sewage/Graywater Alternative 3 and Training Alternative 3), NOAA would take no further action with respect to USCG discharges, thereby allowing the discharge prohibitions to go into effect for USCG activities. Therefore, adopting the No Action alternatives would result in the USCG no longer being allowed to lawfully discharge in the expanded portions of the sanctuaries. This would negatively affect the USCG's ability to meet its mission requirements, including missions to protect sanctuaries' resources and enforce sanctuaries' regulations, and would negatively affect NOAA's ability to meet the purpose and need for the proposed action. Therefore, NOAA continues to find compelling reasons to adopt the action alternatives to allow the discharges.

*Support for Permits for Selection as Final Action*

*Comment:* NOAA should, in conjunction with the No Action alternatives, issue permits to the USCG to allow USCG discharges to continue in order to maintain USCG operations. A permitting approach would not set a precedent; it would allow NOAA to assess conditions periodically and allow for future adaptive management, by inclusion of special terms and conditions in permits to protect the sanctuaries' resources and wildlife. Suggestions for various permitting conditions include issuing multi-year permits, setting specific boundaries for discharges, requiring best management practices and reporting the discharges to NOAA. Issuing permits could be an interim measure until advanced treatment technologies could be installed on USCG vessels.

*Response:* During interagency consultation on the final rule for the boundary expansion for the sanctuaries, USCG requested an exception to regulations as opposed to a permit and indicated to NOAA it does not intend to submit a national marine sanctuary permit application regarding this matter. NOAA cannot issue a permit without first receiving a national marine sanctuary permit application. Since NOAA and USCG are federal agency partners, and USCG supports sanctuary missions, NOAA elected to consider, and propose for public review and comment, the option of creating regulatory exceptions. In the draft EA, NOAA included a discussion of the possibility of issuing permits for USCG discharges under the section for alternatives considered and eliminated from further analysis. As further discussed in the EA, because a permit alternative may be more disruptive or burdensome to USCG mission operations of protecting sanctuary resources and enforcing sanctuary regulations than would regulatory exceptions, this alternative would be less suited to meeting the purpose and need of the proposed action. Moreover, the impacts on the environment and human uses of discharges allowed by a permit would likely be similar, and in some cases identical, to those that would be allowed by the regulatory exceptions proposed in Sewage/Graywater Alternatives 1 and 2 and Training Alternatives 1 and 2. In the final EA, to clarify that the issuance of national marine permits is not an action NOAA would intend to take as part of the No Action alternatives, NOAA revised the descriptions of the No Action alternatives.

*Effects of USCG Untreated Vessel Sewage and Non-Clean Vessel Graywater Discharges*

*Comment:* NOAA should not allow untreated sewage and graywater discharges because they pose risks to or may cause harmful impacts to the local marine ecosystem, including the death of marine species found in GFNMS and CBNMS. Raw sewage in the ocean may transmit dangerous pathogens and intensify future harmful algal blooms and may cause or contribute to eutrophication, localized ocean acidification, or hypoxic or anoxic conditions. Raw sewage contains high levels of harmful microbes, which can be transferred to marine mammals and cause disease or injury. Sewage dumping is known to increase the occurrence and intensity of harmful algal blooms that regularly occur off of the California coast, including within the sanctuaries, which can cause a variety of impacts to or death of marine species.

*Response:* NOAA shares concerns with discharge of untreated sewage and non-clean graywater into national marine sanctuary waters. However, as described in the EA, NOAA expects the infrequent, minor and limited amount of untreated sewage and non-clean graywater discharges from the USCG vessels to quickly disperse and thereby reduce or eliminate any adverse effects on the marine environment. For the reasons explained in the EA, NOAA's preferred alternative for the sewage and graywater discharges is not likely to cause significant adverse impacts on existing water quality conditions in offshore waters, and thus no significant adverse impact beyond the status quo in these portions of the sanctuaries. Additionally, the USCG vessel discharges are already occurring and have been taking place historically, with no observed adverse impacts on environmental conditions. NOAA emphasizes that this analysis is specific to the action evaluated here—regulatory exceptions for certain USCG vessel discharges—and does not predetermine or control any evaluation of potential impacts of other vessel discharges within the sanctuaries.

*Effects of USCG Training Discharges of Ammunition and Pyrotechnic Materials*

*Comment:* NOAA should not allow the USCG to discharge materials incidental to training activities within GFNMS and CBNMS that may poison wildlife or harm human health. For example, various ammunition components may contain dangerous metals, such as arsenic, cadmium, lead, or mercury. In many states, the use of lead products during hunting and fishing has been banned to preserve the health of fish and wildlife. NOAA should work with local communities of biologists to try to avoid or lessen conflict with animal migrations, such as those of whales and seabirds.

*Response:* NOAA does not have any evidence to indicate the USCG live ammunition and SAR training-related discharges in the GFNMS and CBNMS expansion areas have been resulting or in the future would result in any significant adverse impacts to water quality, wildlife or human health. Two of the types of ammunition used during training the USCG characterized as copper-jacketed and the third was uncharacterized by the USCG. The USCG has not indicated it plans to discharge any toxic or hazardous materials or substances in quantities or locations that would be expected to cause significant adverse effects in living resource or humans. Under this final rule, the GFNMS and CBNMS regulations exclude sensitive areas for both marine mammals and seabirds typically found along shorelines, beaches, and rocky outcroppings in nearshore waters. While trace amounts of chemical constituents discharged from weapons and pyrotechnic devices mostly burn up above the surface of the water, some constituents may fall into the water. In general, in the areas within GFNMS and CBNMS in which training discharges are allowed under this final rule, the dynamic oceanic conditions would be expected to disperse these trace amounts of any residual chemical constituents that enter the water as they sink through the water column. There is some risk of fish and wildlife ingestion of the training discharges materials, but

the risk is low due to the very infrequent occurrence of these exercises and the rapid sinking and dispersal of residual components of the discharges. Some residual constituents could sink and persist in marine sediments. Training on a given day normally does not take more than 12 hours, including transit times, and is completed in the same day. The USCG generally conducts live fire and SAR trainings 3–5 days per year (up to 6–10 during a worst case scenario). More information on USCG training activities can be found in the EA. NOAA would not expect significant adverse effects to benthic habitat to occur given the small number of training days and limited number of discharges.

*Comment:* NOAA should not allow USCG-training related discharges in GFNMS and CBNMS in areas that could interfere with recreational and commercial fishing vessels or conflict with human activities near harbor mouths (such as in Bodega Bay or Point Arena). NOAA should work with local communities of biologists and fishermen to try to avoid or lessen conflicts with human activities that may occur as a result of the training-related discharges, and should consider limiting the size and location of the training area.

*Response:* NOAA found no documentation of significant adverse impacts on human uses from past USCG discharges in the GFNMS and CBNMS expansion areas. Under the final rule, the GFNMS and CBNMS discharge prohibitions apply to USCG discharges from the shoreline out to about 3.5 miles (3 nm) in the expanded portions of the two sanctuaries. Thus, the USCG will not be making any discharges adjacent to harbor mouths or by shoreline areas where humans might gather mussels or other resources known to bioaccumulate hazardous or toxic substances. Furthermore, NOAA will continue to actively manage both national marine sanctuaries, including working closely with all the users of the sanctuaries. If concerns arise in the future about interference between USCG discharges and other users, NOAA will discuss those with the USCG and may complete further reviews as needed.

*Endangered Species Act (ESA) Consultation on Effects of Discharges*

*Comment:* Because the proposed exceptions for untreated sewage, graywater and other toxic materials may result in the take of species listed under the ESA, NOAA's ESA section 7 consultation must ensure that granting exceptions for those discharges do not jeopardize the continued existence of any listed species.

*Response:* Upon release of the draft environmental assessment and proposed rule, NOAA informally consulted with NMFS and the USFWS on the proposed action, pursuant to section 7 of the ESA. NMFS responded to NOAA that it concurred with NOAA's determination that the proposed action may affect, but is not likely to adversely affect species and critical habitat. As of June 5, 2018, the USFWS did not provide a response to NOAA's consultation request, at which point NOAA presumed concurrence for the reasons provided in the *Classification* section below. Like NOAA, the USCG is required to follow all relevant federal and state laws, including compliance with environmental statutes, for USCG activities that may affect the environment. The USCG is responsible for complying with ESA section 7 consultation requirements for the effects of the actual USCG activities on threatened and endangered species, as the USCG would be the federal agency performing these activities.

*Retrofit Vessels*

*Comment:* NOAA did not fully consider, and dismissed as infeasible, the alternative of installation of MSDs and graywater treatment facilities on all USCG vessels. The USCG has not explained why it cannot retrofit its vessels and has not explained the costs of doing so. The USCG should be able to make improvements so its vessels do not discharge untreated sewage, by installing Type I or II MSDs and larger holding tanks for untreated sewage and graywater or find other solutions. Retrofitting vessels would be the best solution and would eliminate the need to discharge untreated sewage and graywater at sea. NOAA should encourage the USCG to retrofit vessels over time.

*Response:* NOAA has encouraged the USCG to consider retrofitting its vessels with equipment to eliminate the need for discharging untreated sewage and non-clean graywater. However, implementation of this alternative would be beyond the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances. Moreover, as discussed in the EA section on alternatives considered but eliminated from further analysis, analyzing this alternative would be speculative in the absence of objective information on the status of USCG plans and funding for future vessel designs and acquisition to replace its current fleet of vessels used in GFNMS and CBNMS, or on the feasibility of implementing this alternative 20 years in the future. Moreover, the information needed to conduct a full analysis of this potential alternative is not relevant to a reasonably foreseeable significant adverse impact, as the EA concludes that the effects of the proposed action and alternatives would be less than significant, and is not essential to a reasoned choice among alternatives.

*New Vessels*

*Comment:* NOAA should encourage the USCG to include sewage and graywater treatment or larger holding tanks in any new vessels expected to operate in these marine sanctuaries, rather than permanently allowing discharges of pollutants into sensitive marine environments. Improved technologies and advanced treatment on modern vessels should become available to the USCG.

*Response:* NOAA has encouraged the USCG to consider purchasing new vessels outfitted with Type I or II MSDs (as pertinent to vessel sizes), larger holding tanks or other equipment to prevent discharge of untreated sewage and non-clean graywater. However, the purpose and need of the proposed action reflects the need for existing USCG vessels with Type III MSDs currently to make untreated sewage and non-clean graywater discharges in the expansion areas of GFNMS and CBNMS. NOAA's discussions with USCG on the lifecycles of their vessels indicate that the existing vessels typically operating in GFNMS and CBNMS have at least another 20 years of lifespan before new vessels would replace them. NOAA previously considered having the USCG purchase new vessels as an alternative, but dismissed it from further consideration, because analysis of this alternative would be speculative and implementation of this alternative would also be beyond the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances.

*Inadequacy of Environmental Impact Analysis*

*Comment:* The environmental assessment is inadequate. NOAA should develop a full environmental impact statement (EIS) for this proposed action.

*Response:* After reviewing the available information on the proposed action, the information provided during the public comment period, and the results of consultations as required under applicable natural and cultural resource statutes, NOAA determined that no significant impacts to resources or the quality of the human

environment are expected to result from the final rule. Accordingly, under NEPA (43 U.S.C. 4321 *et seq.*) an environmental impact statement is not required to analyze the potential impacts of this action.

*Maintain High Conservation Standards*

*Comment:* NOAA should maintain the high conservation standards in the sanctuaries' expansion areas that have been in place in the original sanctuary areas [prior to expansion]. The present discharge prohibitions have proven critical to maintaining and improving water quality and living marine resources. The proposed exceptions for USCG discharges of raw sewage, dirty graywater and other toxic materials such as ammunition go against the primary policies of the NMSA (16 U.S.C. 1431(b)(3, 4)), the history of management of sanctuaries, sound stewardship of ecological resources, the rules designating the sanctuaries, and the sanctuaries' regulations that prohibit discharging untreated vessel waste. The final rule designating GFNMS (then the Point Reyes-Farallon Islands National Marine Sanctuary; 46 FR 7936) listed ''discharges incidental to vessel use'' as one of the chief threats facing the sanctuary; the proposed rule for designating CBNMS (52 FR 32563) determined that limiting human-caused discharges of ''any material or substance'' was a primary conservation management goal. Also, the 2008 GFNMS and CBNMS management plans cite the need to continue efforts to control dumping and other discharges.

*Response:* In evaluating the proposed and final action, NOAA considered the purpose and need for the action, the area potentially affected, the purposes and policies of the NMSA, the GFNMS and CBNMS regulations, and the management plans (from 2008 and 2014), among other factors. The action supports the purposes and policies of the NMSA, particularly: ''(2) to provide for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing authorities;. . .(6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of these marine areas not prohibited pursuant to other authorities; . . .[and] (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies . . .''. (16 U.S.C. 1431(b)). In addition, NOAA's regulatory and management framework for GFNMS and CBNMS do contemplate limited allowances of discharges as compatible with the purposes and policies of the NMSA: The existing regulatory discharge prohibitions in GFNMS and CBNMS contain limited exceptions for certain discharges, including some discharges incidental to vessel use. (15 CFR 922.82(a)(2), 922.112(a)(2)(i)). In the EA and analysis for this rule, NOAA has determined that water quality in the GFNMS and CBNMS expansion areas is relatively good, and that the action is not expected to result in significant adverse impacts on water quality or on living marine resources. Further, the number of USCG vessels that will discharge limited amounts of untreated sewage and non-clean graywater is small and training-related discharges of limited quantities of ammunition and pyrotechnic materials will occur only a few days per year (estimated to average 3–5 days, or a maximum of 6–10 days should a serious national security event happen and the USCG needed to expand its normal training program to address it). Therefore, NOAA finds this action appropriate under the NMSA, because it is compatible with the primary objective of resource protection of the sanctuaries and would facilitate the management and enforcement actions of an important federal partner within the GFNMS and CBNMS expansion areas. For additional information on the analyses and alternatives considered and NOAA's rationale for finalizing this action, please see the preamble of the final rule and the final EA.

*Other Alternatives Not Fully Considered*

*Comment:* NOAA did not fully consider or dismissed any alternatives that would eliminate the need for allowing the USCG to dump untreated pollutants and therefore the need for regulatory exception.

*Response:* NOAA described the alternatives it considered to implement the action. For each alternative eliminated from further consideration, NOAA provided the reasons why it did not consider further consideration to be appropriate or feasible, or within the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances.

*Comment:* A possible alternative NOAA should consider is installing pump-out stations at key locations along the coast, a recommended action in the 2008 GFNMS and CBNMS management plans. NOAA should consider requiring the USCG to use the pump-out stations at Bodega Bay, Eureka, and San Francisco Bay. NOAA should foster the development, accessibility, and use of coastal pump-out stations.

*Response:* The four classes of USCG vessels with Type III MSDs operating in the GFNMS and CBNMS expansion areas already use non-public USCG pump-out stations at Bodega Bay and San Francisco Bay, and a non-public facility in Eureka. NOAA understands that these USCG vessels occasionally reach holding tank capacities while conducting operations, and it could be detrimental to mission objectives for USCG personnel to break off their missions to travel outside the sanctuaries' boundaries to discharge (where permitted) or to return to discharge at the shoreside facilities. The final rule is intended to address discharges from USCG vessels without sufficient holding tank capacities, Type I MSDs or Type II MSDs. NOAA did not consider an alternative of immediate installation of additional pump-out stations along the coast adjacent to the GFNMS and CBNMS expansion areas and then requiring USCG vessels to pump out at such stations because implementation of such actions is beyond the scope of NOAA's authority. Planning for, installation and continued operation of new shoreside pump-out facilities in counties adjacent to the expansion areas that would be able to accommodate USCG vessels 87 to 418 feet in length would be dependent upon the availability of suitable geographic locations and subject to the approval of state and relevant local harbor management entities.

*Comment:* A possible alternative NOAA should consider is restricting the discharges to waters a safe distance away from the sanctuaries and state waters. NOAA should not allow the discharges in state waters, especially in waters used for commercial and recreational purposes, such as Tomales Bay.

*Response:* The action does not allow discharges in state waters. NOAA considered and evaluated not allowing USCG to discharge in all waters of the expanded portions of GFNMS and CBNMS by analyzing Sewage/Graywater Alternative 3 (No Action), and rejected this alternative as not feasible for allowing the USCG to meet its mission requirements in the expansion areas, and thus not feasible for meeting the purpose and need of the proposed action.

*Public Process*

*Comment:* NOAA's amendment of the regulations to allow the USCG to discharge in the expansion areas would undermine the strength and purpose of the public process and adoption of the regulations in the 2015 final rule. This proposed regulation could invite future

legal, legislative or political challenges to the protections of the sanctuaries.

*Response:* NOAA has properly followed the relevant procedures for its action and for its final rule to expand GFNMS and CBNMS, including obtaining comments from interested parties during public comment periods as part of scoping and after release of the draft environmental analysis documents and proposed rules. NOAA determines proposed actions based on analyses of available information and on the factors discussed in the relevant environmental analysis documents, in conjunction with public comments received. Public support or opposition may help guide important public policies or other decisions. Future challenges to management and protection of GFNMS and CBNMS are not currently known and therefore would be speculative to analyze.

*Changing Regulations*

*Comment:* Amending the approved regulations would lock in unique exceptions for the USCG that could not easily be modified, as evidenced by the difficulty and lengthy time in considering the current proposals.

*Response:* NOAA acknowledges that the process to amend federal regulations may be lengthy. However, if in the future, the need for the USCG to continue making the discharges in the GFNMS and CBNMS expansion areas should substantively decrease or cease, causing any part of the regulatory exceptions to become obsolete, NOAA could consider initiating a subsequent rulemaking process to alter the regulations.

*Consideration of Sanctuary Advisory Councils' Advice*

*Comment:* NOAA should give great consideration to the fact that both sanctuary advisory councils have unanimously passed resolutions opposing any changes in the regulations, supporting Sewage/Graywater Alternative 3 and Training Alternative 3.

*Response:* NOAA appreciates the advice provided by the two sanctuary advisory councils in this instance and on an ongoing basis. While advisory council recommendations are a valuable source of input from stakeholders and experts on sanctuary management issues, they are not determinative of agency action: Rather, the agency must propose and evaluate actions and alternatives under the established public regulatory and environmental review process. NOAA has carefully considered the input of both sanctuary advisory councils, along with the other comments received, information presented in the environmental assessment and the results of consultations with other agencies and public comment. Based on the stated purpose and need for the action and the environmental analysis conducted, as well as the fact that the USCG is one of NOAA's partners in sanctuary resource protection, requested a regulatory exception during interagency consultation, and has not applied for a national marine sanctuary permit, NOAA continues to find compelling reasons to implement the final rule.

*USCG Enforcement of Discharge Regulations and Uniform Application of Discharge Prohibitions*

*Comment:* The USCG is getting a pass (or ''bye'') for discharges that others, including fishermen, are not allowed to make in the sanctuaries. NOAA should fairly apply regulations and procedures to government organizations and the public alike. Moreover, the USCG is tasked with enforcing the sanctuaries' discharge regulations. Any regulation allowing one group (*e.g.,* the USCG) to undertake otherwise prohibited discharges of pollutants anywhere in GFNMS and CBNMS weakens the protections established under the NMSA.

*Response:* NOAA acknowledges that the USCG, as part of its portfolio of missions, has a law enforcement mission and enforcing the sanctuaries' regulations is one of the USCG's responsibilities. NOAA has detailed the reasons for the USCG's need to continue making the discharges in the GFNMS and CBNMS expansion areas, as it has done prior to the expansion of the sanctuaries in 2015. NOAA has described the purpose for this action and how the USCG assists NOAA with management of the sanctuaries, which is consistent with the purposes and policies of the NMSA, particularly: ''(2) to provide for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing authorities; . . . (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of these marine areas not prohibited pursuant to other authorities; . . . [and] (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies. . . .'' As described in detail in the EA, NOAA expects that the minor and limited volumes of USCG discharges will not cause any significant adverse impacts on sanctuary resources or human uses. The number of other vessels that operate in the national marine sanctuaries is extremely large compared to the number of vessels used for USCG missions, resulting in the potential for cumulative vessel discharge from those vessels vastly greater than that from the USCG. Additionally, NOAA finds that the functions and activities the USCG performs to assist management of GFNMS and CBNMS are beneficial to NOAA, and they could not be easily replaced, if at all, if the USCG had to curtail or cease them in the expanded portions of the sanctuaries.

## IV. Classification

*A. National Environmental Policy Act*

NOAA has prepared a final environmental assessment (EA) to evaluate the potential impacts on the human environment of this rulemaking, including the preferred action analyzed in the final EA, as well as alternative actions. No significant adverse impacts to resources and the human environment are expected, and accordingly, under NEPA (43 U.S.C. 4321 *et seq.*) an environmental assessment is the appropriate document to analyze the potential impacts of this action. NOAA finalized its NEPA analysis and findings and prepared a final EA document and Finding of No significant Impact. Copies of the final EA are available at the address and website listed in the **ADDRESSES** section of this final rule.

*B. Executive Order 12866: Regulatory Impact*

This final rule has been determined to be not significant within the meaning of Executive Order 12866.

*C. Executive Order 13771: Regulatory Reform*

This final rule is not an Executive Order 13771 regulatory action because this final rule is not significant under Executive Order 12866.

*D. Executive Order 13132: Federalism Assessment*

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

*E. Regulatory Flexibility Act*

The purpose of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) is to fit regulatory requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. The RFA requires that agencies

determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their ultimate choice of regulatory approach. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that the final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the changes are specifically targeted to the activities of the USCG in CBNMS and GFNMS, and will not have an economic effect on any small businesses. Also, this final rule will not substantively alter the rights, responsibilities, or legal obligations pertaining to vessel discharges for the regulated community. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

*F. Paperwork Reduction Act*

This final rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980 (PRA; 44 U.S.C. 3501 *et seq*). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*G. National Historic Preservation Act*

In fulfilling its responsibility under the National Historic Preservation Act (NHPA;54 U.S.C. 300101 *et seq.*), and NEPA, NOAA determined the proposed action was not the type of activity that would affect historic properties and communicated to the California State Historic Preservation Officer (SHPO) upon publication of the proposed rule that it expected no adverse effect to historic properties resulting from this undertaking. On December 20, 2017, the California SHPO responded with no objection to NOAA's determination, thereby completing NHPA requirements. No individuals or organizations notified NOAA after publication of the proposed rule that they wished to participate as a consulting party.

Satisfying consultation requirements for the effects of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, on historic properties remain the responsibility of USCG, as USCG will be the federal agency performing these activities.

*H. Endangered Species Act*

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1531, *et seq.*), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies to, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS initiated informal consultation under the ESA with NOAA's NMFS Office of Protected Resources (OPR) and the United States Fish and Wildlife Service (USFWS) upon publication of the proposed rule and draft EA. The ONMS consultations focused on potential adverse effects to threatened and endangered species by providing regulatory exceptions to its discharge prohibitions within waters of the GFNMS and CBNMS expansion areas seaward of approximately 3 nm from the shore. ONMS provided the proposed rule, the draft environmental assessment, a biological evaluation, and additional information to staff of NMFS and USFWS. NMFS responded that it concurred with ONMS's determination of no adverse impacts to species listed as threatened or endangered and critical habitat designated under the ESA from the proposed action. The USFWS did not provide a response to NOAA's consultation request dated November 22, 2017. Subsequently, NOAA submitted a follow-up request to USFWS on May 22, 2018, stating that if NOAA did not receive a response by June 5, 2018, NOAA would assume USFWS concurrence with the determination that the proposed action may affect but is not likely to adversely affect listed species. No response was received by June 5, 2018, at which point NOAA presumed USFWS concurrence.

Satisfying consultation requirements for the effects of the actual USCG vessel discharges of untreated sewage and non-clean graywater, and training-related discharges, on threatened and endangered species remain the responsibility of USCG, as USCG will be the lead agency performing these activities.

*I. Marine Mammal Protection Act*

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended, prohibits the ''take'' [8] of marine mammals in U.S. waters. Section 101(a)(5)(A–D) of the MMPA provides a mechanism for allowing, upon request, the ''incidental,'' but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS requested technical assistance from NMFS on October 16, 2017, with ONMS's preliminary assessment that this action was not likely to result in take of marine mammals. ONMS' request for technical assistance focused on the effects on marine mammals of providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shore in the GFNMS and CBNMS expansion areas. On October 24, 2017, NMFS deemed that the proposed action would not likely result in the take of marine mammals, thereby completing MMPA requirements for this action. Satisfying consultation requirements for the effects on marine mammals of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, remain the responsibility of USCG, as USCG will be the federal agency performing these activities.

*J. Coastal Zone Management Act (CZMA)*

The principal objective of the CZMA is to encourage and assist states in developing coastal management programs, to coordinate state activities, and to preserve, protect, develop and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal

[8] The MMPA defines take as: ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.'' Harassment means any act of pursuit, torment, or annoyance which, (1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

management program, to the maximum extent practicable. NOAA provided to the California Coastal Commission copies of the proposed rule and the draft EA upon publication, and a statement that NOAA's proposed action, providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shoreline in the GFNMS and CBNMS expansion areas, would not affect the land or water uses of the coastal zone beyond what is currently occurring under the status quo, and did not require a consistency determination. On December 8, 2017, the California Coastal Commission staff agreed with NOAA's negative determination and concluded that this action would not constitute a change in existing conditions and would not adversely affect coastal zone resources, thereby completing the CZMA requirements.

Satisfying consultation requirements for the effects on land or water uses or natural resources of California's coastal zone of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, remain the responsibility of the USCG, as the USCG will be the federal agency performing these activities.

*K. Magnuson-Stevens Fishery Conservation and Management Act (MSA)*

In 1976, Congress passed the MSA (16 U.S.C. 1801, *et seq.*). The MSA fosters long-term biological and economic sustainability of the nation's marine fisheries out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The MSA promotes domestic commercial and recreational fishing under sound conservation and management principles and provides for the preparation and implementation, in accordance with national standards, of fishery management plans (FMPs). Essential fish habitat (EFH [50 CFR 600.10]) describes all waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity. Section 305(b) of the MSA (16 U.S.C. 1855(b)) outlines the consultation requirements for EFH for federal agencies.

NOAA's ONMS initiated consultation with NMFS on EFH concurrently with the informal consultation with NMFS under the ESA upon publication of the draft environmental assessment and proposed rule. For the EFH consultations ONMS provided NMFS with a list of species assemblages for which EFH has been designated, the proposed rule, and the draft environmental assessment. NOAA's consultation focused on the effects on EFH of providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shoreline in the GFNMS and CBNMS expansion areas.

ONMS determined that the proposed action would not adversely affect EFH, therefore no EFH consultation was required. The ONMS determination of ''not adversely affect EFH'' completes the EFH consultation.

Satisfying consultation requirements for the effects of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater training-related discharges, on EFH remain the responsibility of the USCG, as the USCG would be the federal agency performing these activities.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

**Paul M. Scholz,**

*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, NOAA is amending part 922, title 15 of the Code of Federal Regulations as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

### Subpart H—Greater Farallones National Marine Sanctuary

■ 2. Amend § 922.82 by revising paragraphs (a)(2)(iv) and (v), adding paragraph (a)(2)(vi), and revising paragraph (a)(4) to read as follows:

**§ 922.82 Prohibited or otherwise regulated activities.**

(a) * * *

(2) * * *

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(v) Vessel engine or generator exhaust; or

(vi) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating within the designated area [2015 expansion area] defined in appendix G of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix G of this subpart.

* * * * *

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (vi) and (a)(3) of this section.

* * * * *

■ 3. Add appendix Gto subpart H to read as follows:

**Appendix G to Subpart H of Part 922—Designated Area for Certain United States Coast Guard Discharges**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Greater Farallones National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1 identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc, and continues from Point 2 to Point 3 in a straight line arc, and from Point 3 to Point 4 in a straight line arc. From Point 4 the boundary extends east and north along a straight line arc towards Point 5 until it intersects the fixed offshore boundary between the United States and California (approximately 3 NM seaward of the coast as defined in *United States* vs. *California,* 135 S. Ct. 563 (2014)). The boundary then extends northward following the fixed offshore boundary between the United States and California until it intersects the line segment formed between Point 6 and Point 7. From this intersection, the boundary extends west along the northern boundary of Greater Farallones National Marine Sanctuary to Point 7 where it ends.

| Point No. | Latitude | Longitude |
|---|---|---|
| 1 | 39.00000 | −124.33350 |
| 2 | 38.29989 | −123.99988 |
| 3 | 38.29989 | −123.20005 |
| 4 | 38.26390 | −123.18138 |

| Point No. | Latitude | Longitude |
|---|---|---|
| 5 [1] | 38.29896 | −123.05989 |
| 6 [1] | 39.00000 | −123.75777 |
| 7 | 39.00000 | −124.33350 |

[1] These coordinates are not a part of the boundary for the Designated Area for Certain United States Coast Guard Discharges. These coordinates are reference points used to draw line segments that intersect with the fixed offshore boundary between the United States and California.

## Subpart K—Cordell Bank National Marine Sanctuary

■ 4. Amend § 922.112 by revising paragraphs (a)(2)(i)(D) and (E) and adding paragraph (a)(2)(i)(F) to read as follows:

**§ 922.112 Prohibited or otherwise regulated activities.**

(a) * * *

(2)(i) * * *

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating within the designated area [2015 expansion area] defined in appendix C of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix C of this subpart.

* * * * *

■ 5. Add appendix C to subpart K to read as follows:

### Appendix C to Subpart K of Part 922—Designated Area for Certain United States Coast Guard Discharges

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Cordell Bank National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1, identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc and continues in numerical order through each subsequent point to Point 38. From Point 38 the boundary extends west along the northern boundary of Cordell Bank National Marine Sanctuary to Point 39 where it ends.

| Point No. | Latitude | Longitude |
|---|---|---|
| 1 | 38.29989 | −123.99988 |
| 2 | 37.76687 | −123.75143 |
| 3 | 37.76716 | −123.42758 |
| 4 | 37.77033 | −123.43466 |
| 5 | 37.78109 | −123.44694 |
| 6 | 37.78383 | −123.45466 |
| 7 | 37.79487 | −123.46721 |
| 8 | 37.80094 | −123.47313 |
| 9 | 37.81026 | −123.46897 |
| 10 | 37.81365 | −123.47906 |
| 11 | 37.82296 | −123.49280 |
| 12 | 37.84988 | −123.51749 |
| 13 | 37.86189 | −123.52197 |
| 14 | 37.87637 | −123.52192 |
| 15 | 37.88541 | −123.52967 |
| 16 | 37.90725 | −123.53937 |
| 17 | 37.92288 | −123.54360 |
| 18 | 37.93858 | −123.54701 |
| 19 | 37.94901 | −123.54777 |
| 20 | 37.95528 | −123.56199 |
| 21 | 37.96683 | −123.57859 |
| 22 | 37.97761 | −123.58746 |
| 23 | 37.98678 | −123.59988 |
| 24 | 37.99847 | −123.61331 |
| 25 | 38.01366 | −123.62494 |
| 26 | 38.01987 | −123.62450 |
| 27 | 38.02286 | −123.61531 |
| 28 | 38.02419 | −123.59864 |
| 29 | 38.03409 | −123.59904 |
| 30 | 38.04614 | −123.60611 |
| 31 | 38.05308 | −123.60549 |
| 32 | 38.06188 | −123.61546 |
| 33 | 38.07451 | −123.62162 |
| 34 | 38.08289 | −123.62065 |
| 35 | 38.11256 | −123.63344 |
| 36 | 38.13219 | −123.64265 |
| 37 | 38.26390 | −123.18138 |
| 38 | 38.29989 | −123.20005 |
| 39 | 38.29989 | −123.99988 |

[FR Doc. 2018–24200 Filed 11–8–18; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 100, 117, 147, and 165

**[USCG–2018–0983]**

### 2018 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of expired temporary rules issued.

**SUMMARY:** This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

**DATES:** This document lists temporary Coast Guard rules that became effective, primarily between July 2018 to September 2018, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

**ADDRESSES:** Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions on this document contact Yeoman First Class David Hager, Office of Regulations and Administrative Law, telephone (202) 372–3862.

**SUPPLEMENTARY INFORMATION:** Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, Coast Guard patrol vessels provide actual notification when enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners

were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between July 2018 to September 2018 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

| Docket Number | Type | Location | Effective date |
|---|---|---|---|
| USCG–2017–1017 | Safety Zones | Los Angeles, CA | 4/25/2018 |
| USCG–2018–0319 | Safety Zones | Pittsburgh, PA | 5/24/2018 |
| USCG–2018–0345 | Safety Zones | San Diego, CA | 5/27/2018 |
| USCG–2018–0206 | Safety Zones | Main Ship Channel | 5/30/2018 |
| USCG–2018–0547 | Safety Zones | Chicago, IL | 6/12/2018 |
| USCG–2018–0418 | Special Local Regulations | South Haven, MI | 6/19/2018 |
| USCG–2018–0640 | Safety Zones | Detroit, MI | 6/27/2018 |
| USCG–2018–0506 | Safety Zones | Blackslough Landing, CA | 6/30/2018 |
| USCG–2018–0576 | Safety Zones | Hempstead, NY | 6/30/2018 |
| USCG–2018–0293 | Safety Zones | Baltimore County, MD | 6/30/2018 |
| USCG–2018–0429 | Special Local Regulations | Cape May, NJ | 7/1/2018 |
| USCG–2018–0651 | Safety Zones | Little Traverse Bay, MI | 7/1/2018 |
| USCG–2018–0446 | Security Zones | Corpus Christi, TX | 7/3/2018 |
| USCG–2018–0370 | Special Local Regulations | Christi, TX | 7/4/2018 |
| USCG–2018–0500 | Safety Zones | Panama City, FL | 7/4/2018 |
| USCG–2018–0478 | Safety Zones | Dempolois, AL | 7/4/2018 |
| USCG–2018–0555 | Safety Zones | Shreveport, LA | 7/4/2018 |
| USCG–2018–0203 | Safety Zones | Murrells Inlet, SC | 7/4/2018 |
| USCG–2018–0171 | Safety Zones | North Charleston, SC | 7/4/2018 |
| USCG–2018–0145 | Safety Zones | Charleston, SC | 7/4/2018 |
| USCG–2018–0436 | Safety Zones | Myrtle Beach, SC | 7/4/2018 |
| USCG–2018–0568 | Special Local Regulations | New York, NY | 7/4/2018 |
| USCG–2018–0454 | Safety Zones | Long Island | 7/4/2018 |
| USCG–2018–0543 | Safety Zones | Bullhead City, Arizona | 7/4/2018 |
| USCG–2018–0355 | Safety Zones | San Diego COPT Zone | 7/4/2018 |
| USCG–2012–1036 | Safety Zones | Port Long Island Zone | 7/4/2018 |
| USCG–2018–0620 | Special Local Regulations | Mystic, CT | 7/8/2018 |
| USCG–2018–0699 | Safety Zones | Huron, MI | 7/12/2018 |
| USCG–2018–0649 | Safety Zones | Buffalo, NY | 7/13/2018 |
| USCG–2018–0646 | Safety Zones | Cleveland, OH | 7/13/2018 |
| USCG–2018–0378 | Safety Zones | Orange, TX | 7/14/2018 |
| USCG–2018–0690 | Safety Zones | Lake St. Clair | 7/18/2018 |
| USCG–2018–0705 | Security Zones | St. Louis, MO | 7/19/2018 |
| USCG–2018–0719 | Safety Zones | Delaware City, DE | 7/21/2018 |
| USCG–2018–0721 | Safety Zones | Clayton, NY | 7/21/2018 |
| USCG–2018–0545 | Safety Zones | Port Lake Michigan Zone | 7/21/2018 |
| USCG–2018–0642 | Safety Zones | Cleveland, OH | 7/21/2018 |
| USCG–2018–0721 | Safety Zones | Clayton, NY | 7/21/2018 |
| USGC–2018–0463 | Safety Zones | Beaufort, SC | 7/21/2018 |
| USCG–2018–0471 | Special Local Regulations | San Juan, Harbor | 7/22/2018 |
| USCG–2018–0726 | Safety Zones | Branson, MO | 7/23/2018 |
| USCG–2018–0616 | Safety Zones | Spring Valley, IL | 7/23/2018 |
| USCG–2018–0727 | Security Zones | Louis, MO | 7/26/2018 |
| USCG–2018–0311 | Security Zones | Louis, MO | 7/26/2018 |
| USCG–2018–0564 | Safety Zones | Ocean City, NJ | 7/28/2018 |
| USCG–2018–0687 | Special Local Regulations | Port Duluth Zone | 7/28/2018 |
| USCG–2018–0747 | Security Zones | Oahu, HI | 7/31/2018 |
| USCG–2018–0609 | Safety Zones | Copt New York Zone | 8/3/2018 |
| USCG–2018–0734 | Safety Zones | San Francisco, CA | 8/4/2018 |
| USCG–2018–0758 | Safety Zones | St. Paul, MN | 8/8/2018 |
| USCG–2018–0768 | Safety Zones | Steukacoom, WA | 8/10/2018 |
| USCG–2018–0741 | Safety Zones | Bellaire, OH | 8/11/2018 |
| USCG–2018–0830 | Special Local Regulations | Shreveport, LA | 8/11/2018 |
| USCG–2018–0756 | Notices | Lake Michigan Zone | 8/11/2018 |
| USCG–2018–0715 | Special Local Regulations | Bullhead City, Arizona | 8/11/2018 |
| USCG–2018–0755 | Safety Zones | Manitowoc, WI | 8/17/2018 |
| USCG–2018–0816 | Safety Zones | Lodi, NY | 8/23/2018 |
| USCG–2018–0829 | Special Local Regulations | Greenville, MS | 8/24/2018 |
| USCG–2018–0806 | Security Zones | Corpus Christi, TX | 8/25/2018 |
| USCG–2018–0766 | Safety Zones | Sinclair Inlet, WA | 8/28/2018 |
| USCG–2018–0861 | Safety Zones | Gulf of Mexico | 8/31/2018 |

| Docket Number | Type | Location | Effective date |
|---|---|---|---|
| USCG–2012–1036 | Safety Zones | Island Park | 9/1/2018 |
| USCG–2018–0823 | Safety Zones | Port Michigan Zone | 9/1/2018 |
| USCG–2018–0858 | Security Zones | Annapolis, MD | 9/2/2018 |
| USCG–2018–0712 | Security Zones | San Diego, CA | 9/2/2018 |
| USCG–2018–0748 | Safety Zones | Naval Base Guam | 9/3/2018 |
| USCG–2018–0650 | Safety Zones | San Francisco, CA | 9/4/2018 |
| USCG–2018–0783 | Safety Zones | Carnelian Bay, CA | 9/7/2018 |
| USCG–2018–0851 | Safety Zones | Pennsville, NJ | 9/8/2018 |
| USCG–2018–0581 | Safety Zones | Hawaiian Island | 9/10/2018 |
| USCG–2018–0618 | Special Local Regulations | San Diego, CA | 9/14/2018 |
| USCG–2018–0738 | Special Local Regulations | San Diego, CA | 9/14/2018 |
| USCG–2018–0865 | Safety Zones | Sandusky, OH | 9/15/2018 |
| USCG–2018–0723 | Safety Zones | Philadelphia, PA | 9/16/2018 |
| USCG–2018–0902 | Safety Zones | Seattle, WA | 9/19/2018 |
| USCG–2018–0833 | Safety Zones | Chicago, IL | 9/20/2018 |
| USCG–2018–0892 | Safety Zones | WI, Harbor | 9/21/2018 |
| USCG–2018–0898 | Special Local Regulations | Toledo, OH | 9/22/2018 |
| USCG–2018–0900 | Drawbridges | Seaside Heights, NJ | 9/26/2018 |
| USCG–2018–0802 | Special Local Regulations | Hartford, CT | 9/29/2018 |
| USCG–2018–0897 | Safety Zones | Washington DC | 9/30/2018 |
| USCG–2018–0643 | Special Local Regulations | Clearwater Beach, FL | 9/30/2018 |

Date: October 25, 2018.

**Katia Kroutil,**

*Office Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

[FR Doc. 2018–24539 Filed 11–8–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2018–0975]**

## Drawbridge Operation Regulation; Delaware River, Tacony, PA and Palmyra, NJ

**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 SR 73/Tacony-Palmyra Bridge which carries SR 73 across the Delaware River, mile 107.2, between Tacony, PA and Palmyra, NJ. The deviation is necessary to facilitate bridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** The deviation is effective from 6 a.m. through 6 p.m. on November 20, 2018.

**ADDRESSES:** The docket for this deviation, USCG–2018–0975 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Burlington County Bridge Commission, owner and operator of the SR 73/Tacony-Palmyra Bridge which carries SR 73 across the Delaware River, mile 107.2, between Tacony, PA and Palmyra, NJ, has requested a temporary deviation from the current operating schedule to facilitate installation of a replacement electrical festoon control cable of the double bascule span of the drawbridge. The bridge has a vertical clearance of 50 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position.

The current operating schedule is set out in 33 CFR 117.716. Under this temporary deviation, the bridge will be in the closed-to-navigation position from 6 a.m. through 6 p.m. on November 20, 2018.

The Delaware River is used by a variety of vessels including deep draft commercial vessels, U.S. government and public vessels, small commercial vessels, tug and barge traffic, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that 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: October 31, 2018.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2018–24511 Filed 11–8–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0957]**

## Multiple Safety Zones; Fireworks Displays in Captain of the Port New York Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone within the Captain of the Port New York Zone on the specified date and times. This action is necessary to ensure the safety of vessels, spectators and participants from hazards

associated with fireworks displays and swim events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

**DATES:** The regulation for the safety zone described in 33 CFR 165.160 will be enforced on the date and times listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email Petty Officer First Class Ronald Sampert U.S. Coast Guard; telephone 718–354–4197, email *ronald.j.sampert@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified date and time as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

| | |
|---|---|
| 1. Pyro Engineering Inc., Liberty Island Safety Zone, 33 CFR 165.160 (2.1). | • Launch site: A barge located in approximate position 40°41′16.5″ N 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.<br>• Date: November 29, 2018.<br>• Time: 10:00 p.m.–11:30 p.m. |
| 2. Circle Line Sightseeing Yachts NYE, Liberty Island Safety Zone, 3 CFR 165.160 (2.1). | • Launch site: A barge located in approximate position 40°41′16.5″ N 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.<br>• Date: December 31, 2018–January 1, 2019.<br>• Time: 11:00 p.m.–01:00 a.m. |

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts.

If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: October 3, 2018.

**J.P. Tama,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2018–24573 Filed 11–8–18; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2017–0614; FRL–9982–73]**

### Tin Oxide; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of tin oxide (CAS Reg. No. 18282–10–5) when used as an inert ingredient (seed treatment colorant) not to exceed 40% by weight in pesticide formulations applied to growing crops. Exponent on behalf of Aceto Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of tin oxide.

**DATES:** This regulation is effective November 9, 2018. Objections and requests for hearings must be received on or before January 8, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0614, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0614 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 8, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0614, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Petition for Exemption

In the **Federal Register** of March 21, 2018 (83 FR 12311) (FRL–9974–76), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11058) by Exponent (1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036), on behalf of Aceto Corporation (Aceto, 4 Tri Harbor Court, Port Washington, NY 11050). The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of tin oxide (CAS Reg. No. 18282–10–5) when used as an inert ingredient (seed treatment colorant) in pesticide formulations applied to growing crops not to exceed 40% by weight. That document referenced a summary of the petition prepared by Exponent on behalf of Aceto Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no timely comments received in response to the notice of filing.

## III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tin oxide including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with tin oxide follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by tin oxide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Although limited data are available on tin oxide, tin oxide belongs to the chemical class of water insoluble inorganic tins; therefore, the Agency used data available on inorganic tins, specifically tin (II) chloride (CAS Reg No. 21651–19–4) to fill data gaps.

The acute oral toxicity of tin oxide is very low. The lethal dose, $(LD)_{50}$>20,000 milligrams/kilograms (mg/kg) in rats

and mice. There is no eye irritation in Leghorn eggs nor in bovine cornea.

The only repeated dose studies available with tin oxide are the 28-day and 13-week oral toxicity studies in rats. No toxicity is observed in either study up to 1,000 and 500 mg/kg/day, respectively of tin oxide, the highest dose tested in both studies.

Although developmental and reproduction toxicity studies are not available on tin oxide, evidence of potential developmental or reproduction toxicity is not observed in the available studies with tin oxide and no toxicity is seen up to 500 mg/kg/day, the highest dose tested. Available reproduction and developmental studies with tin (II) chloride that show no maternal, offspring or reproduction toxicity at 40 mg/kg/day, the highest dose tested, in rats, although these studies are of limited value since the doses tested were not high enough to assess developmental and reproduction effects. Nevertheless, there is no concern for fetal susceptibility due to dietary exposure to tin oxide because it is insoluble and is not expected to be absorbed or cause systemic toxicity. Also, no toxicity is observed in reproduction organs at 500 and 1,000 mg/kg/day, the highest doses tested in the 13- and 4-week, respectively, oral toxicity studies in rats.

Carcinogenicity studies with tin (II) chloride in rats and mice indicate that inorganic tins are not carcinogenic at 40 and 60 mg/kg/day, respectively, the highest dose tested.

In an *in vitro* mutagenicity assay, tin oxide caused micronuclei and karyorrhexis in lung macrophages. The toxicologic significance of this finding is equivocal.

Neurotoxicity and immunotoxicity studies are not available for review. However, no evidence of neurotoxicity and immunotoxicity is observed in the submitted studies.

The absorption of inorganic tin compounds from the gastrointestinal tract in humans and animals is very low with as much as 98% excreted directly in the feces. Because of their limited absorption, inorganic tin compounds have low systemic toxicity.

*B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The 13-week oral toxicity study in rats is selected for the chronic dietary exposure scenario. No toxicity is observed up to 500 mg/kg/day, the highest dose tested. The lowest NOAEL in the database is found in the developmental and reproduction toxicity studies in the rat. In these studies, no treatment related adverse toxicity is observed at 800 ppm (40 mg tin/kg/day), the highest dose tested in both studies. However, the developmental and reproduction toxicity studies are not considered appropriate for risk assessment since tested doses are not high enough to assess developmental and reproduction toxicity. Therefore, the 13-week toxicity study in rats treated with tin oxide is used for the chronic dietary exposure scenario. There is no concern for the lack of developmental and reproduction toxicity studies because tin oxide is an insoluble tin and is not expected to be absorbed or cause systemic toxicity. Further supporting the lack of toxicity, no systemic toxicity or adverse effects are observed up to 500 mg/kg/day, the highest dose tested, in the 13-week toxicity study in rats. Based on the weight of evidence, there is no concern for increased susceptibility and no additional uncertainty factor is necessary. The standard inter- and intra-species uncertainty factors of 10x are applied. Dermal and inhalation endpoints were not selected as tin oxide is not expected to be dermally absorbed because it is insoluble, and not expected to be absorbed in the lungs due to its particle size.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tin oxide, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from tin oxide in food as follows:

Dietary exposure (food and drinking water) to tin oxide can occur following ingestion of foods with residues from treated crops with pesticide formulations containing tin oxide. In addition, dietary exposure can occur from exposure to non-pesticidal sources of tin oxide. FDA has approved the use of tin oxide as a colorant in food-contact articles at a maximum level of 1.1% by weight in colorants otherwise composed of mica and titanium dioxide, provided that the maximum loading rate for the colorant in the food-contact material does not exceed 3% by weight for polymers, 5% for paper and paperboard, 15% for coatings, or 30% for ink formulations. See Food and Drug Administration (FDA) threshold of regulation (TOR) exemption 98–004. It may be used, in combination with silicon dioxide and titanium dioxide, as a colorant for food-contact polymers, paper and paperboard, coatings, and in printing inks applied to non-food-contact surfaces of food-contact articles. The food contact substance will be used at a level not to exceed 6% of the total colorant weight. See FDA, Food Contact Notification (FCN) 000431. Tin oxide can also be used as a pigment for all polyolefins for food contact applications as long as the use level does not exceed 0.5% by weight of the polymer and is subject to certain limitations. See FDA, Food Contact Notification (FCN) 235.

Because no adverse effects attributable to a single exposure of tin oxide are seen in the toxicity databases, an acute dietary risk assessment is not necessary. For the chronic dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™), Version 3.16, and food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/ WWEIA). As to residue levels in food, no residue data were submitted for tin oxide. In the absence of specific residue data, EPA utilized a highly conservative assumption that the residues on all commodities are 47 ppm based on the effective application rate of tin oxide when used as a colorant for seed treatment pesticide products and the presumption that all applied tin oxide

would be present in the edible portions of crops derived from treated seed. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for tin oxide, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Tin oxide is not expected to be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, as the requested use is for commercial use only. However, tin oxide is present in cosmetics and personal care products. The typical reported concentration for tin oxide in cosmetics and personal care products ranges from 0.03 to 1.3%. Based on the 2013 Cosmetic Ingredient Review (CIR) document, tin oxide is used in dusting powders (up to 0.03%), body and hand cosmetic sprays (up to 0.06%), and other fragrance preparations (up to 0.08%).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found tin oxide to share a common mechanism of toxicity with any other substances, and tin oxide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that tin oxide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

### *D. Safety Factor for Infants and Children*

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10x is reduced to 1X for the chronic dietary assessment for the following reasons. First, the toxicity database for tin oxide contains subchronic, carcinogenicity and mutagenicity studies. There is no indication of immunotoxicity or neurotoxicity in the available studies; therefore, there is no need to require an immunotoxicity or neurotoxicity study. Although no developmental and reproduction toxicity studies with tin oxide are available, there is no concern for fetal susceptibility because tin oxide is insoluble and is not expected to be absorbed or cause systemic toxicity. Further supporting the lack of toxicity, no adverse effects or systemic toxicity are observed up to 500 mg/kg/day, the highest dose tested, in the 13-week toxicity study in rats. Based on the weight of evidence, there is no concern for increased susceptibility and, the Agency has concluded that reducing the FQPA SF to 1X is appropriate.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tin oxide from food and water will utilize 38.3% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the available data, oral exposure to tin oxide residues from non-pesticide uses is expected to be negligible compared to the conservative estimates of exposure resulting from the proposed use as a colorant for seed treatment pesticides, and not expected to significantly impact dietary exposure.

3. *Short- and intermediate-term risks.* Short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level).

Tin oxide is not expected to be used as an inert ingredient in pesticide products that could result in short- and intermediate-term residential exposure as the request is strictly for commercial seed treatment use only, although tin oxide is currently approved for use in cosmetic, manufacturing applications.

Dermal exposure to residues of tin oxide is not expected to result in systemic toxicity as tin oxide is insoluble and not absorbed through the skin. Inhalation exposure is possible due to its use in cosmetics and personal care products. However, as reported in the CIR 2013 on tin oxide, inhalation exposure to tin oxide particles are not expected as 95–99% of the particles are >10 micrometers (um) and not expected to enter the lungs. Because of the lack of adverse effects from dermal or inhalation exposure, the Agency does not expect these residential exposures to pose risks of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two rodent carcinogenicity studies, tin oxide is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tin oxide residues.

## V. Other Considerations

*A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. The Agency ensures compliance with the limitation in the tolerance exemption through the registration of pesticides with formulations that satisfy the limitation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

## VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for residues of tin oxide (CAS Reg. No. 18282–10–5) when used as an inert ingredient (colorant) in pesticide seed treatment formulations applied to growing crops not to exceed 40% by weight.

## VII. Statutory and Executive Order Reviews

This action establishes an exemption to the requirement for a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 1, 2018.

**Michael L. Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, add alphabetically the inert ingredient ''Tin oxide (CAS Reg. No. 18282–10–5)'' to the table to read as follows:

**§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.**

* * * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| Tin oxide (CAS Reg. No. 18282–10–5) ... | Not to exceed 40% by weight for use in seed treatment pesticide formulations only. | Colorant. |
| * * * * * * * | | |

[FR Doc. 2018–24585 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 160426363–7275–02]**

**RIN 0648–XG595**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Reopening of the Commercial Sector for King Mackerel in the Gulf of Mexico Western Zone

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

**ACTION:** Temporary rule; reopening.

**SUMMARY:** NMFS reopens the commercial sector for king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. The most recent commercial landings data for king mackerel in the Gulf western zone indicate the commercial quota for the 2018–2019 fishing year has not yet been reached. Therefore, NMFS reopens the commercial sector for king mackerel in the Gulf western zone for 7 days to allow the commercial quota to be caught.

**DATES:** This temporary rule is effective at 12:01 a.m., local time, on November 12, 2018, until 12:01 a.m., local time, on November 19, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lauren Waters, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *lauren.waters@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All of the following weights for king mackerel apply as either round or gutted weight.

The commercial quota for Gulf migratory group king mackerel (Gulf king mackerel) in the western zone is 1,116,000 lb (506,209 kg) for the current fishing year, July 1, 2018, through June 30, 2019 (50 CFR 622.384(b)(1)(i)).

The western zone of Gulf king mackerel is located in the EEZ between a line extending east from the international border of the United States and Mexico, and 87°31.1′ W long., which is a line extending south from the state boundary of Alabama and Florida. The western zone includes the EEZ off Texas, Louisiana, Mississippi, and Alabama.

Regulations at 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf king mackerel in the western zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS previously projected that the commercial quota of 1,116,000 lb (506,209 kg) for Gulf king mackerel in the western zone would be reached on October 5, 2018. Accordingly, NMFS published a temporary rule to close the western zone to commercial fishing for Gulf king mackerel effective at noon, local time, on October 5, 2018, through June 30, 2019, the end of the current fishing year (83 FR 50295, October 5, 2018). However, a recent landings update indicates that the commercial quota for king mackerel in the Gulf western zone was not reached on October 5, 2018. Approximately 8,500 lb (3,856 kg) of the commercial quota remain, and NMFS projects that this amount will be harvested in 7 days.

For the reasons stated above, and in accordance with 50 CFR 622.8(c), NMFS temporarily reopens the commercial sector for king mackerel in the Gulf western zone beginning at 12:01 a.m., local time, on November 12, 2018. The commercial sector will close 7 days later at 12:01 a.m., local time, on November 19, 2018, and remain closed until July 1, 2019, the start of the next fishing year. NMFS has determined that reopening the Gulf western zone will allow additional opportunities to harvest the commercial quota of king mackerel in that zone.

During the closure beginning at 12:01 a.m., local time, on November 19, 2018, a person on board a vessel that has been issued a valid Federal commercial or charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in the western zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(ii) and (a)(2), as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)).

Also during the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

### Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.8(c) have already been subject to notice and public comment, and all that remains is to notify the public that additional harvest is available under the established commercial quota, and therefore, the commercial sector for king mackerel in the western zone of the Gulf EEZ will reopen.

Prior notice and an opportunity to comment is contrary to the public interest, because NMFS previously determined the commercial quota for king mackerel in the western zone of the Gulf EEZ would be reached and, therefore, closed the commercial sector for king mackerel in this zone. However, following a recent landings update the commercial quota for king mackerel in the Gulf western zone was not reached on October 5, 2018, and therefore, additional commercial quota of king mackerel in the Gulf western zone is available for harvest during the 2018–2019 fishing year. Reopening quickly is expected to help achieve optimum yield by making additional king mackerel available to consumers and resulting in revenue increases to commercial vessels.

For the aforementioned reasons, the AA also finds good cause to waive the

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 6, 2018.

**Alan D. Risenhoover,**

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

[FR Doc. 2018–24589 Filed 11–6–18; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 83, No. 218
Friday, November 9, 2018

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

## DEPARTMENT OF HOMELAND SECURITY

**RIN 1615–AC33**

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 655

**[Docket No. ETA–2018–0003]**

**RIN 1205–AB91**

## Modernizing Recruitment Requirements for the Temporary Employment of H–2B Foreign Workers in the United States

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security and Employment and Training Administration, Department of Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) and the Department of Labor (DOL) (collectively, the Departments), are jointly proposing regulatory revisions that would modernize the recruitment an employer seeking H–2B nonimmigrant workers must conduct when applying for a temporary labor certification. In particular, the Departments are proposing to replace the print newspaper advertisements that their regulations currently require with electronic advertisements posted on the internet, which the Departments believe will be a more effective and efficient means of disseminating information about job openings to U.S. workers. The Departments are proposing to replace, rather than supplement, the newspaper requirements because they believe that exclusive electronic advertisements posted on a website appropriate for the workers likely to apply for the job opportunity in the area of intended employment would best ensure that U.S. workers learn of job opportunities.

**DATES:** Comments must be submitted, in writing, on or before December 10, 2018.

**ADDRESSES:** You may send comments, identified by the agencies' names and the DOL Docket No. ETA–2018–0003 or Regulatory Information Number (RIN) 1205–AB91, by any of the following methods:

*Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments (under ''Help'' > ''How to use *Regulations.gov*'').

*Mail and hand delivery/courier:* Submit written comments and any additional material to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

*Instructions:* Label all submissions with ''RIN 1205–AB91.'' Please submit your comments by only one method. All submissions must include the agencies' names and the DOL RIN 1205–AB91.

Please be advised that DOL will post all comments received that relate to this notice of proposed rulemaking (NPRM) on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public. Therefore, DOL recommends that commenters remove personal information (either about themselves or others) such as Social Security Numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the *http://www.regulations.gov* website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that, due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, DOL encourages the public to submit comments on *http://www.regulations.gov.*

*Docket:* To read or download comments or other material in the electronic docket, go to *http://www.regulations.gov* website (search using RIN 1205–AB91 or Docket No. ETA–2018–0003). DOL 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, DOL will provide appropriate aids, such as readers or print magnifiers. DOL will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

*Comments under the Paperwork Reduction Act (PRA):* In addition to filing comments with ETA, persons wishing to comment on the information collection (IC) aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503, Fax: (202) 395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov. See* Paperwork Reduction Act section of this proposal for particular areas of interest.

**FOR FURTHER INFORMATION CONTACT:** Regarding the Department of Labor: William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 513–7350 (this is not a toll-free number). Regarding the Department of Homeland Security: Kevin J. Cummings, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2120, telephone (202) 272–8377 (not a toll-free call).

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:**

## I. Background

### *A. Legal Framework*

The Immigration and Nationality Act (INA), 8 U.S.C. 1101, *et seq.,* establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b).[1] The Secretary of Homeland Security, in administering the H–2B program, may grant a petition for an otherwise eligible H–2B nonimmigrant worker ''after consultation with appropriate agencies of the Government.'' 8 U.S.C. 1184(c)(1). The Secretary of Homeland Security also may delegate to ''any employee of the United States, with the consent of the head of the applicable Department or other independent establishment, . . . any of the powers, privileges, or duties conferred or imposed'' on DHS under the INA. 8 U.S.C. 1103(a)(6); *see also* 8 CFR 2.1. DHS regulations provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A). Pursuant to and in accordance with the above authorities, the temporary labor certification serves as DHS's consultation with DOL to determine the question of whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D).

In order to advise DHS on the availability of U.S. workers and the potential for adverse effect on the wages and working conditions of similarly employed U.S. workers, DOL's Office of Foreign Labor Certification (OFLC) provides consultation to DHS through issuance of temporary labor certifications, in accordance with 8 U.S.C. 1103(a) and 1184(c);). *See* 8 CFR 214.2(h)(6)(iii)(A) and (D). The Departments have jointly issued regulations that govern the standards and procedures applicable to OFLC's issuance of temporary labor certifications under the H–2B program. *See* 20 CFR 655 subpart A. The regulations at 20 CFR 655 subpart A require employers seeking H–2B temporary labor certification to, among other things, actively recruit for U.S. workers before submitting petitions with DHS to hire foreign workers.

The standards and procedures governing the recruitment of U.S. workers generally are set forth in 20 CFR 655.40–655.48. These regulations generally require, among other things, that an employer seeking an H–2B temporary labor certification (1) place two print advertisements in a newspaper of general circulation serving the area of intended employment, § 655.42(a); (2) contact former U.S. workers employed in the previous year to solicit their return, § 655.43; and (3) contact the bargaining unit, if one exists, to seek referrals of U.S. workers, or if a bargaining unit does not exist, post the job opportunity at the place(s) of employment for at least 15 consecutive business days, § 655.45. An employer may need to conduct additional recruitment, as provided in section 655.46(a), where the OFLC Certifying Officer (CO) determines there is a likelihood that qualified U.S. workers will be available to fill the employer's job opportunity.

As relevant here, section 655.42(a) requires an employer seeking an H–2B temporary labor certification to place a print advertisement on two separate days, one of which must be a Sunday, in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and workers likely to apply for the job opportunity. If the employer's job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, then section 655.42(b) permits the CO to direct the employer, in place of a Sunday edition, to place a print advertisement in the regularly published daily edition with the widest circulation in the area of intended employment. Both advertisements must meet the minimum content requirements set forth in section 655.41, and the employer is required to maintain documentation of the actual newspaper advertisement(s) published in the event of an audit or other review. § 655.42(d).

### *B. Joint Issuance*

In order to effectuate DHS's requirement for DOL consultation, which is provided in the form of temporary labor certifications, DOL must issue regulations to structure procedures and substantive standards for its issuance of labor certifications, as DOL has done for almost 50 years. On April 29, 2015, following a court's vacatur of nearly all of DOL's H–2B regulations, the Departments jointly promulgated an interim final rule (IFR) governing DOL's role in issuing temporary labor certifications and enforcing the statutory and regulatory rights and obligations applicable to employment under the H–2B program. *See* Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24,042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503) (''2015 H–2B IFR'').

As explained in the 2015 H–2B IFR, following conflicting legal decisions about DOL's authority to independently issue legislative rules to carry out its duties for the H–2B program under the INA, the Departments jointly issued the 2015 H–2B IFR ''to ensure that there can be no question about the authority for and validity of the regulations in this area.'' 80 FR at 24,045; *see also* 80 FR at 24,044–24,047.[2] Specifically, DHS's participation in the rulemaking is pursuant to its broad authority to issue rules in the H–2B program under 8 U.S.C. 1103(a)(3) and 1184(a), and, as referenced above, DOL—which has the institutional expertise on all matters relating to the domestic labor market and has for decades issued temporary labor certifications and legislative rules governing them in the non-agricultural foreign worker program—is necessarily authorized to promulgate rules governing its issuance of temporary labor certifications pursuant to 8 U.S.C. 1103(a) and 1184(c). The Departments further explained that by issuing the 2015 H–2B IFR jointly, ''the Departments affirm that this rule is fully consistent with the INA and implementing DHS regulations and is vital to DHS's ability to faithfully implement the statutory labor protections attendant to the program.'' 80 FR at 24,045–46. Litigation on these and related matters is ongoing. Accordingly, notwithstanding that DOL has authority to independently issue this NPRM, DHS is joining DOL in this rulemaking to ensure that there can be

[1] For ease of reference, sections of the INA are referred to by their corresponding section in the United States Code.

[2] DOL's authority to jointly regulate with DHS has not been found invalid. While the same district court twice issued an injunction against DOL's unilaterally-issued H–2B rules, *see Bayou Lawn & Landscape Servs.* v. *Solis,* 2012 WL 12887385 (N.D. Fla. Apr. 26, 2012) and *Bayou Lawn* v. *Perez,* 81 F. Supp. 3d 1291, 1300 (N.D. Fla. 2014) (*Bayou II*), it has since upheld the joint rules, *Bayou Lawn* v. *Johnson,* 173 F. Supp. 3d 1271, 1277, 1289–91 (N.D. Fla. 2016) (*Bayou III*), with the court noting that the primary difference between the enjoined 2012 rules and the 2015 rules was their joint promulgation. *Id.* at 1277, n2.

no question about the authority underlying this action.

*C. Need for Rulemaking*

The Departments are proposing to modernize the recruitment that an employer must conduct under section 655.42 by replacing print newspaper advertisements with electronic advertisements posted on the internet. After due consideration, the Departments believe that advertisements posted on the types of websites described below will reduce burden on employers and applicants, and be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that section 655.42 currently requires.

The Departments are basing this proposal on several considerations. First, available data suggest that U.S. workers are now much more likely to turn to the internet to search for work than classified newspaper advertisements in print newspapers. For instance, a recent survey conducted by the Pew Research Center indicated that 79 percent of Americans research jobs online, whereas only 32 percent use ''ads in print publications,'' and only four percent found ads in print publications to be the most useful tool in obtaining their recent employment.[3] This trend is likely to continue as U.S. workers gain increased and more convenient access to the internet via smartphones and other digital devices,[4] and print newspaper circulation continues to decline.[5] Consequently, classified advertisements in print editions are becoming a less effective means of notifying potential applicants about available job opportunities.[6] In recognition of these facts, many newspapers now offer online classified employment listings using multi-platform content providers, and popular online job search websites power the job boards of thousands of newspaper sites, providing a lower cost recruiting option for employers and job seekers alike.[7]

Second, this general trend is consistent with anecdotal evidence that the Departments have received from stakeholders, who have reported that print newspaper advertisements are not an effective method of recruiting prospective U.S. workers for job opportunities filled by H–2B workers. For instance, two comments submitted in response to the 2015 H–2B IFR indicated that reliance on newspaper advertising to recruit U.S. workers was outmoded. Specifically, the Northwest Workers' Justice Project (NWJP), a not-for-profit organization that provides civil legal assistance to low-income persons, stated:

> We support the general notion of modernizing the forms of outreach to potential workers to be used to recruit domestic workers. The use of alternative advertising forums reflects changes in information exchanges and job searches and is appropriate. Fewer and fewer unemployed U.S. workers search for jobs through newspapers, and the elimination of newspaper advertising should have a minimal impact on domestic worker recruiting. We recommend that the regulations should expressly discuss new innovations now widely used by employers of domestic workers to recruit new employees, such as web-based advertising on sites such as Monster.com and participation in job fairs.

NWJP comment at 11 (July 2, 2015).[8] Similarly, the American Immigration Lawyers Association (AILA), a national not-for-profit organization of immigration attorneys and law professors, requested that the Departments:

> move beyond newspaper advertisements as a method for recruiting American workers. Newspaper circulation has been in decline for years, as is evidenced by the overall decline in the number of print newspapers currently on the market. The decrease in newspaper readership, coupled with increased access to internet job banks has changed the way workers look for jobs. Requiring lengthier (and significantly more costly) ads will not result in more applicants, just more funds expended by employers. DOL should focus on new electronic avenues of job notification instead of requiring employers to run expensive advertisements.

AILA Comment at 10 (July 2, 2015).[9]

Finally, electronic advertisements offer employers a less expensive, more convenient means of broadly disseminating information about their job opportunities to potential U.S. workers. Many websites offer standard advertising packages for free or at significantly lower marginal costs than the standard print newspaper advertisement, and advertisements can be posted on these sites for longer periods than a typical print newspaper advertisement remains in circulation, providing greater exposure of the employer's job opportunity to U.S. workers at no additional cost to the employer. Moreover, unlike print advertisements, which are subject to publishing deadlines that can delay exposure of the job opportunity to U.S. workers, an electronic advertisement can be posted within minutes or hours of submission to the website.

In light of the foregoing, the Departments are proposing to revise the recruitment that an employer must conduct under section 655.42 to replace print newspaper advertisements with electronic advertisements posted on the internet, as described below. The Departments are also proposing minor amendments to sections 655.48 and 655.71 to conform those sections with the Departments' proposed elimination of print newspaper advertisements.

## II. Discussion of Proposed Revisions to 20 CFR Part 655, Subpart A

*A. Revise Section 655.42 To Replace Newspaper Advertisements With Electronic Advertisements*

The Departments are proposing to revise section 655.42(a) to replace the requirement that an employer place print newspaper advertisements with a requirement that the employer advertise its job opportunity on a website that is widely viewed and appropriate for use

[3] Aaron Smith, *Searching for Work in the Digital Era,* Pew Research Center, Nov. 19, 2015, *http://www.pewinternet.org/2015/11/19/searching-for-work-in-the-digital-era/; see also* R. Jason Faberman & Marianna Kudlyak, *What Does Online Job Search Tell Us About The Labor Market?,* Economic Perspectives, Jan. 2016, *https://www.chicagofed.org/~/media/publications/economic-perspectives/2016/ep2016-1-pdf.pdf* (observing that the online job search has become the preferred method of search for nearly all types of job seekers and recent research suggests that it is the new norm for how job seekers find work); Richard Hernandez, *Online Job Search: The New Normal,* Monthly Labor Review (Bureau of Labor Statistics, U.S. Dep't. of Labor, Wash. DC), Jan. 2017, *https://www.bls.gov/opub/mlr/2017/beyond-bls/pdf/online-job-search-the-new-normal.pdf* (reporting that the online job search is now the most popular method of job hunting).

[4] In 2018, 89 percent of American adults used the internet, and 77 percent of American adults owned a smartphone, up from just 35 percent in 2011. *See* internet/Broadband Fact Sheet, Pew Research Center, Feb. 5, 2018, *http://www.pewinternet.org/fact-sheet/internet-broadband/; Mobile Fact Sheet,* Pew Research Center, Feb. 5, 2018, *http://www.pewinternet.org/fact-sheet/mobile/.*

[5] By 2014, fewer than 15 percent of Americans received a daily newspaper. *See* Elaine C. Kamarck and Ashley Gabriele, *The News Today: 7 Trends in Old and New Media,* The Brookings Institution, Nov. 10, 2015, *https://www.brookings.edu/research/the-news-today-7-trends-in-old-and-new-media.*

[6] According to the Pew Research Center, the total circulation of U.S. daily newspapers (print and digital combined) in 2017 was approximately 31 million, down 38 percent from more than 50 million in 2007. Pew Research Center, June 13, 2018, *http://www.journalism.org/fact-sheet/newspapers/* Newspapers Fact Sheet. Conversely, job search websites today are attracting a far larger pool of potential applicants to find jobs. For example, the top 15 job search websites alone attract nearly 200 million unique visitors each month to search for employment.

[7] *See* Christine Del Castillo, *Does Anyone Advertise Jobs in Newspapers Anymore?,* Workable, May 19, 2016, *https://resources.workable.com/blog/newspaper-job-ads.*

[8] Accessed at *https://www.regulations.gov/document?D=ETA-2015-0005-0124.*

[9] Accessed at *https://www.regulations.gov/document?D=ETA-2015-0005-0125.*

by workers who are likely to apply for the job opportunity in the area of intended employment. The Departments propose to remove the word ''occupation'' from the text in order to address a possible redundancy in the language. This proposed drafting change is stylistic only, and the Departments intend to effect no substantive change by it.

The proposed rule would not mandate that an employer post its advertisement on a specific website. Rather, proposed section 655.42(a) would allow an employer to place an advertisement on any of a variety of websites that are widely viewed and appropriate for use by workers who are likely to apply for the job opportunity in the area of intended employment, including websites that specialize in advertising job opportunities for the specific industry or occupation, and websites that specifically serve the local area, such as localized online job listing services and digital classified sections of local newspapers. Proposed section 655.42(a) also contemplates the use of websites that are not specifically directed at workers in the area of intended employment or the particular occupation, so long as the website is appropriate for the occupation and adequately serves the area of intended employment.

The Departments anticipate that advertisements posted on the types of websites described above will provide greater exposure of job opportunities to U.S. workers than the print newspaper advertisements that section 655.42 currently requires, because they can be more easily accessed by applicants across a much larger geographic area and for a longer period. The Departments invite comments on whether they should establish qualifying criteria (*e.g.,* minimum number of unique visitors per month), or define the types of websites on which an employer may place an electronic advertisement under the proposed rule, and whether the rule should exclude websites maintained by the employer and/or the employer-client of a job contractor seeking to employ H–2B workers, as defined in section 655.5. The Departments also solicit comments on whether, instead of eliminating print newspaper advertisements, they should instead offer electronic advertisements as an alternative means of satisfying the existing print advertising requirement in section 655.242. The Departments are not proposing this option, given the data and trends discussed in Section I.C., which suggest that electronic advertisements will be more effective in disseminating information about job opportunities to the American workforce. However, the Departments invite comments on whether there are employers that lack the technology or internet access necessary to place the electronic advertisements described in the proposed rule, and if so, how the Departments should determine whether such employers have met their obligation to recruit U.S. workers. For instance, the Departments could leave current recruitment requirements in place as an option for such employers. The Departments solicit comments on whether there are alternative methods that would more broadly and effectively disseminate information about available job opportunities to U.S. workers.

Proposed section 655.42(b) specifies that an employer's advertisement must be clearly visible on the website's homepage or be easily retrievable using the search tools on the website. Any advertisement that is not clearly visible on the website's homepage must be easily retrievable. An advertisement is easily retrievable if it can be quickly accessed using a prominently displayed link on the website's homepage or the search tools and filters that are prominently displayed on the website's homepage. Each navigation choice or interaction that a job seeker has with the website should take him or her closer to the job opportunity being advertised, and applicants should be able to quickly locate job vacancies using a number of search criteria, such as occupation, job or position title, geographic location, pay range, and keywords in the job description. The employer must use commonly understood terms and keywords to describe its job opportunity when placing the advertisement, so that U.S. workers who are likely to apply for the position will retrieve the advertisement when using the website's search function.

Proposed section 655.42(b) would also require an employer to post the electronic advertisement for a period of no less than 14 consecutive calendar days. Unlike the print newspaper advertisements that an employer must place under the current rule, which are typically published once, many websites offer standard advertising packages that allow an employer to place an advertisement for a weekly period or up to 30 calendar days for free or at a much lower marginal cost than a standard print newspaper advertisement. Accordingly, the Departments anticipate that the fourteen-day consecutive posting period in proposed section 655.42(b) will attract more U.S. workers to job opportunities than the print newspaper advertisements that this section currently requires, because an employer's job opportunity will be easily accessible to U.S. workers seeking jobs for a longer period than a print newspaper advertisement, at no additional cost to the employer.

Further, in order to assure that the job opportunity described in the advertisement is readily available to U.S. workers, proposed section 655.42(b) would require that the advertisement be publicly accessible at no cost to an applicant. To meet this requirement, the website on which the advertisement is placed cannot require U.S. workers to pay fees to establish personal accounts or make payments of any kind to view the advertisement. The website must also be functionally compatible with the latest commercial web browser platforms and easily viewable on mobile smartphones and similar portable devices. Moreover, like the current rule, proposed section 655.42(b) would require that the advertisement comply with the minimum content requirements set forth in section 655.41.

In order to ensure that an employer retains the evidence necessary to demonstrate compliance with proposed section 655.42(a) and (b), proposed section 655.42(c) would require an employer to print and retain screen shots of the web pages on which its advertisement appears and screen shots of the web pages establishing the path used to access the advertisement. Although the proposed rule does not require employers to submit this documentation to the CO with their recruitment reports, an employer must nevertheless retain this documentation in accordance with 20 CFR 655.56 and provide it to DOL in the event of an audit or other review.

The proposed section 655.42(d) includes a transition provision that would permit an employer submitting an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019 to elect between placing (a) an electronic advertisement in accordance with the requirements in the proposed rule, or (b) two newspaper advertisements in accordance with existing requirements. Because the Departments are proposing to have this rule take effect immediately upon publication of the final rule, the Departments are including this transition period to provide flexibility to employers that seek additional time to understand and comply with the proposed regulatory revisions, while simultaneously permitting employers that wish to place electronic advertisements immediately upon the effective date of the final rule the ability

to do so. The transition provision is intended to better ensure, among other things, that employers who have purchased newspaper advertising space in advance do not lose the benefit of such purchase.

However, the option to elect between the placement of newspaper and electronic advertisements would apply only to those applications with a date of need prior to October 1, 2019. All employers submitting an *Application for Temporary Employment Certification* with a date of need after the transition period ends (*i.e.,* employers with dates of need beginning on or after October 1, 2019) would be required to place an advertisement in accordance with the proposed revisions to 655.42(a)–(c).

*B. Other Minor Changes for Conformance*

The Departments are proposing minor revisions to two other sections in subpart A in order to conform the regulatory text of those sections with the proposed revision to section 655.42. First, the Departments are proposing to amend section 655.48(a)(i), relating to recruitment reports, by revising the requirement that an employer provide the name of the newspaper used to satisfy the recruitment requirement in section 655.42 to instead require the name of the website used to satisfy this requirement. Second, the Departments are proposing to amend section 655.71(c)(2) by deleting the option to use newspaper advertisements for assisted recruitment.

*C. DOL-Assisted Advertising*

DOL, with the concurrence of DHS, has taken initial steps toward creating an online platform to assist employers in complying with the requirements for electronic advertising under this proposed rule. Pending the outcome of this rulemaking, DOL intends to leverage the latest advertising technologies by establishing a mechanism to make advertising data available to popular job-search websites. Specifically, DOL is evaluating the development of a centralized platform to automate the electronic advertising of approved H–2B job opportunities. DOL anticipates that, once fully developed and implemented, this electronic advertising platform would maintain a standard set of data on each job opportunity that can be integrated with a wide array of job search website technologies. Through this platform, DOL would make available to job-search websites real-time access to the information that employers provide about their job opportunities subject to agreement to abide by terms of service. The companies that operate job-search websites would execute standard protocols to pull new H–2B jobs from the online platform in real time for advertising to U.S. workers.

If developed as currently envisioned, DOL expects that employers would provide information about their job opportunities, at the time of filing their H–2B temporary labor certification applications, and indicate their intention to use the electronic advertising platform. Employers that elect to use this platform would have information about their job opportunities transmitted by DOL to companies offering to provide advertising services, which in turn would advertise these jobs on the companies' job search websites.

The Departments believe that facilitating employers' use of technology is in the best interest of employers and U.S. workers. Because information about the job opportunity would already be provided at the time of filing the H–2B temporary labor certification application and transmitted by DOL to companies operating these job search websites, the burden associated with placing separate electronic advertisements would be significantly reduced. The goal is to reduce burdens on the regulated community, while ensuring that the maximum number of U.S. workers learn about job opportunities. Having DOL maintain a publicly available list of the companies participating in this advertising platform would give U.S. workers and other organizations that provide employment placement services a greater degree of certainty regarding where these temporary or seasonal jobs will be advertised and available for U.S. workers to apply. Employers that elect to use the new platform would satisfy the advertising requirements in § 655.42. Finally, offering this platform to employers would ensure more uniform compliance with advertising requirements.

The Departments are not soliciting comments on this electronic advertising platform at this time, but the Departments, or DOL acting alone, may inform the public about the advertising platform's completion through a notice in the **Federal Register**.

## III. Administrative Information

*A. Administrative Procedure Act*

The Departments propose to claim an exception under 5 U.S.C. 553(d)(1) from the 30-day delayed effective date requirement on the basis that relieves the restriction against on-line advertising of jobs for which an employer seeks to hire H–2B workers. The final rule would relieve regulated parties of the requirement that they only place paper advertisements in newspapers of general circulation in the area of intended employment. During the transition period, which would apply to all employers who file an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019, the rule would allow employers to select between placing two paper newspaper advertisements or placing an online advertisement. After the transition period ends, the rule would altogether replace the newspaper advertising requirement with online advertising, which is anticipated to be more cost-effective and flexible for employers, as well as a more effective way of reaching U.S. workers who may be able, willing, and qualified for the employers' job opportunities. The online advertising would also provide flexibility for U.S. workers who are job seekers to identify and apply for the job opportunities for which employers seek to hire H–2B workers. As discussed in greater detail in this preamble, this approach is in line with commenter requests on the 2015 H–2B joint Interim Final Rule, urging the Departments to transition to an online recruitment model. The Departments anticipate that allowing employers additional time to transition away from advertising by newspaper over an approximately six-month period after the rule's publication would provide needed flexibility, and thus provide employers with notice and time to conform their business practices to the new rule. This rule would take effect immediately upon publication of the final rule.

*B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Sec. 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also

referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* OMB has determined that this proposed rule is a significant, but not an economically significant, regulatory action under Sec. 3(f) of E.O. 12866. Consequently, OMB has reviewed this rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action because the cost savings to H–2B employers associated with the rule are larger than the costs. The estimated cost savings associated with this regulatory action are derived from the proposed revision to section 655.42(a), which would replace print newspaper advertisements with electronic advertisements posted on the internet.

1. Subject-by-Subject Analysis

The Departments' analysis below considers the expected impacts of the following aspects of the proposed rule against the baseline (*i.e.,* the 2015 Interim Final Rule): (a) The replacement of newspaper advertisements with electronic advertisements, and (b) the time it takes the regulated community to read and review the rule.

a. Electronic Advertisements

The Departments are proposing to modernize the positive recruitment that an employer must conduct under the regulations by eliminating the use of print newspaper advertisements and replacing it with electronic advertisements posted on the internet, which will make the job opportunity more broadly available to U.S. workers. Specifically, the Departments are proposing to revise section 655.42(a) to replace print newspaper advertisement requirements with a requirement for an electronic advertisement posted on a website appropriate for the workers who are likely to apply for the job opportunity in the area of intended employment. As discussed in section I.C. of the preamble to this NPRM, the basis for this proposal is rooted in the Departments' determination that electronic advertisements will be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that the regulations currently require.

i. Cost Savings

To estimate the cost savings to employers that would result from the proposed rule, the Departments first calculated the average number of H–2B temporary labor certifications approved in a Fiscal Year (FY) based on data from FY 2015–2017, which yielded an annual average of 5,879.[10] Next, the Departments identified the top five states in which prospective H–2B employers received temporary labor certifications and researched the cost of placing a newspaper advertisement in the most populous city in each of these states (for several newspapers, including large and local papers) that would satisfy the advertising content requirements.[11] The Departments then averaged the data obtained to estimate the average cost of complying with section 655.42. Based on these data, the Departments determined that the average cost of placing a single, one-day newspaper advertisement required by section 655.42 is $803.08.[12]

As mentioned above, the Departments believe, based on preliminary research, that employers can choose to advertise using online job search websites free of charge or at significantly lower marginal costs, so removing the requirement to advertise in a print newspaper would result in a cost savings equal to the cost of complying with the current regulation.[13] Although section 655.42 currently requires employers to advertise on two consecutive days, one of which must be a Sunday, the Departments did not identify a significant difference in cost between advertisements placed on Sundays and weekdays, so the Departments did not distinguish between these two costs when calculating total advertising cost savings. To estimate the annual cost savings of newspaper advertising costs that employers will avoid under the proposed rule, the Departments multiplied the average annual number of approved H–2B temporary labor certifications (5,879) by the average newspaper advertising cost of $803.08, and multiplied it by two to account for each of the days that employers seeking H–2B workers are currently required to place newspaper advertisements. This yielded an average annual cost savings of $9.44 million [14] for employers.

b. Time To Understand Rule

During the first year that this rule would be in effect, employers seeking H–2B workers would need time to learn about the new requirements. The Departments assume that many employers participating in the H–2B program would learn about the requirements of the new rule from an industry newsletter or bulletin. The Departments assume that the amount of time required to understand the rule change to be 10 minutes. The proposed rule addresses only the job advertising requirements for employers seeking H–2B workers.

i. Costs

This requirement represents a cost to employers participating in the H–2B program in the first year of the rule. The Departments estimate this cost by multiplying the time required to read and review the new rule (10 minutes) by the median hourly wage of a human resources specialist ($31.84),[15] multiplied by a factor of two (2) to account for fringe benefits and overhead, which yields a cost of $10.61 [16] per employer. The Departments estimate the total cost of reading and reviewing the rule by

[10] The average is based on 5,106 H–2B temporary labor certifications in FY 2015; 5,933 temporary labor certifications in FY 2016; and 6,599 temporary labor certifications in FY 2017. Calculation: (5,106 + 5,933 + 6,599)/3 = 5,879 (rounded)). *See https://www.foreignlaborcert.doleta.gov/performancedata.cfm.*

[11] The top 5 states in which employers seek to place H–2B workers are Colorado, Florida, Louisiana, Texas, and Virginia.

[12] The Departments assume that these advertisements would be placed in the newspaper classified section for employment.

[13] The Departments have data on three commonly used job-search websites that allow employers to advertise free of charge.

[14] Calculation: 5,879 × $803.08 = $9,442,615 = $9.44 million (rounded).

[15] Wage derived from Bureau of Labor Statistics median hourly wage for HR Specialists (occupation code 13–1071), U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2017, Human Resources Specialist: *https://www.bls.gov/oes/2017/may/oes131071.htm.*

[16] Calculation: ($31.84 × 2)/6 (10 minutes) = $10.61 (rounded).

multiplying $10.61 by the average annual number of employers participating in the H–2B program over FY 2015–2017 (6,151). This calculation results in a cost of $65,283 [17] in the first year.

The Departments acknowledge, however, that there are some potentially limited situations—particularly in rural communities—where the upfront costs associated with accessing the internet and learning how to post such advertisements may result in noteable opportunity costs for employers. The Departments believe that very few employers who currently participate in the H–2B program do not currently have access to the internet. For those employers that do not currently have internet access, the Departments estimate that it will take two hours to access the internet (which may include transporation to the nearest library), research the websites and pick one to use, establish an account on that website, learn how to post a job on the website, and establish an email account. In addition, employers would need to make additional trips to check for responses from U.S. workers. Because of the uncertainties, we are unable to provide an estimate of the number of employers who do not have access to the internet and would incur these additional costs to post advertisements online. The Departments seek comment from the public on the likely magnitude and incidence of these costs. For employers with access to the internet who are not familiar with posting such advertisements online, there will be some up front costs associated with the time it takes to research job advertisement sites, establish an account, and learn how to post a job on the website.

However, online advertisements for H–2B employment would increase the visibility of job openings to potential U.S. workers and increase the number of workers that would be able to access these jobs. This benefit would significantly outweigh any cost potentially incurred by the negligible number of employers who do not currently have access to the internet due to transitioning from print newspaper advertisements to online job postings. The Departments therefore believe that the net societal benefit of implementing this rule would be maximized if all H–2B employers are required to utilize online advertisements. As such this rule constitutes as a deregulatory action.

[17] Calculation: $10.61 × 6,151 = $65,283 (rounded).

2. Summary of Impacts

The Departments estimate the total first-year costs of the proposed rule to be $65,283. This cost results from the estimated time required to read and review the proposed rule by a human resources specialist. This cost is incurred by all employers seeking H–2B workers subject to proposed section 655.42(a). The Departments estimate a first-year cost savings of $9.44 million. This cost savings results from replacing the requirement that employers place print newspaper advertisements with a requirement that employers place internet advertisements. Net first-year cost savings amount to $9.38 million.[18] This estimated cost savings excludes any increase in costs to employers without current access to the internet.

Generally, annual cost savings are expected to be $9.44 million in all years following the first year due to the lack of monetized costs regarding the time required to read and review the proposed rule. The 10-year discounted net cost savings of the proposed rule range from $66.25 million to $80.46 million (with 7- and 3-percent discount rates, respectively). The annualized net cost savings of the proposed rule is $9.43 million (with 3- and 7-percent discount rates). When the Departments use a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of this proposed rule are $9.44 million at a discount rate of 7 percent (excluding any increased costs to employers without access to the internet).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

This proposed rule may impact small businesses that request H–2B temporary labor certifications. The Departments assume that the average number of H–2B temporary labor certifications requested by any small business per year would be one. The Departments estimate that small businesses would incur a one-time cost of $10.61 to familiarize themselves with the rule and would incur annual cost savings of $1,606.16 associated with advertising online rather than in print newspapers. Over a 10-year analysis period, the net annualized cost savings for a small business would be $1,604.74 at a 7-percent discount rate.

The Departments reviewed the impacts of the proposed rule for two North American Industry Classification System (NAICS) Codes that frequently request H–2B temporary labor certifications: NAICS 561730: Landscaping Services, and NAICS 721110: Hotels (except Casino Hotels) and Motels. The Small Business Administration estimates that revenue for a small business with NAICS Code 561730 is $7.5 million and for NAICS Code 721110 is $32.5 million.[19] The impact of the proposed rule would be less than 1 percent of annual revenue for the smallest businesses in these industries with the employment size fewer than 5 ($197,491 for NAICS 561730 and $321,239 for NAICS 721110).[20] Based on this determination, the Departments certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval using

[18] Calculation: $9,442,615 − $65,283 = $9,377,332 = $9.38 million (rounded).

[19] U.S. Small Business Administration (2017), *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* retrieved from: *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

[20] U.S. Census, *2012 SUSB Annual Data Tables by Establishment Industry, https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.*

emergency clearance procedures outlined at 5 CFR 1320.13.

More specifically, this rule proposes to replace print newspaper advertisements with an advertisement posted on at least one website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment. The proposed rule would require that this advertisement be clearly visible on the website's homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the advertising content requirements set forth in § 655.41. Under the proposed rule and in accordance with 20 CFR 655.56(c)(2)(ii), an employer would be required to retain documentation demonstrating that it posted an electronic advertisement in compliance with the requirements in the proposed rule, including screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement. The employer must be prepared to produce all information and records contained in this information collection in the event of an audit examination, investigation, or other enforcement proceedings in the H–2B program. The Departments are using technology to reduce burden by replacing newspaper advertisements with electronic advertisements. The information collection requirements associated with this rule are summarized as follows:

*Agency:* DOL–ETA.

*Type of Information Collection:* New.

*Title of the Collection:* Advertising Requirements for Employers Seeking to Employ H–2B Nonimmigrant Workers.

*Agency Form Number:* None.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 5,879.

*Average Responses per Year per Respondent:* 2.

*Total Estimated Number of Responses:* 11,758.

*Average Time per Response:* 7 minutes per application.

*Total Estimated Annual Time Burden:* 686 hours.

*Total Estimated Other Costs Burden:* $0.

*D. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

This NPRM, if finalized, does not exceed the $100 million expenditure in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Departments have not prepared a statement under the Act.

*E. Small Business Regulatory Enforcement Fairness Act of 1996*

This NPRM, if finalized, would not be a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs has found that this rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

*F. Executive Order 13132: Federalism*

This NPRM does not have federalism implications because it would 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. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

*G. Executive Order 13175, Indian Tribal Governments*

This NPRM does not have ''tribal implications'' because it would 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. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

*H. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

This NPRM would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

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

This NPRM would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

*J. Environmental Impact Assessment*

This action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This action is therefore categorically excluded from further review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375.

*K. Executive Order 13211, Energy Supply*

This NPRM has not been identified to have impacts on energy supply. Accordingly, Executive Order 13211 requires no further agency action or analysis.

*L. Executive Order 12630, Constitutionally Protected Property Rights*

This NPRM, would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

*M. Executive Order 12988, Civil Justice Reform Analysis*

This NPRM was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. It was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the

Federal court system. It meets the applicable standards provided in section 3 of Executive Order 12988.

**List of Subjects in 20 CFR Part 655**

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons stated in this document, 20 CFR part 655 is proposed to be amended as follows:

## PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; sec. 205 of division M, Pub. L. 115–141, 132 Stat. 348; 8 CFR 2.1, 214.2(h)(4)(i), and 214.2(h)(6)(iii).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Revise § 655.42 to read as follows:

**§ 655.42 Advertising in the area of intended employment.**

(a) *Where to conduct recruitment.* The employer must place an advertisement for the job opportunity on at least one website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment.

(b) *Nature of the recruitment.* The advertisement must be clearly visible on the website's homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the requirements set forth in § 655.41.

(c) *Proof of recruitment.* An employer must retain documentation in accordance with § 655.56(c)(2)(ii) that demonstrates compliance with paragraphs (a) and (b) of this section. Such documentation must include screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement.

(d) *Transition period for applications with dates of need prior to October 1, 2019.* (1) All employers submitting an *Application for Temporary Employment Certification* with a date of need on or after October 1, 2019 must place and retain documentation of an electronic advertisement in accordance with paragraphs (a) through (c) of this section.

(2) An employer submitting an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019 may elect to place two newspaper advertisements in compliance with requirements in paragraphs (d)(2)(i) through (iv) of this section, in lieu of placing and retaining documentation of the electronic advertisement required by paragraphs (a) through (c) of this section.

(i) The employer must place an advertisement (which must be in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (d)(2)(ii) of this section), in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and the workers likely to apply for the job opportunity.

(ii) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(iii) The newspaper advertisements must satisfy the requirements in § 655.41.

(iv) The employer must maintain copies of newspaper pages (with date of publication and full copy of the advertisement), or tear sheets of the pages of the publication in which the advertisements appeared, or other proof of publication furnished by the newspaper containing the text of the printed advertisements and the dates of publication, consistent with the document retention requirements in § 655.56. If the advertisement was required to be placed in a language other than English, the employer must maintain a translation and retain it in accordance with § 655.56.

■ 3. Amend § 655.48 by revising paragraph (a)(1) to read as follows:

**§ 655.48 Recruitment report.**

(a) * * *

(1) The name of each recruitment activity or source (*e.g.,* job order and the name of the website as required in § 655.42(a) on which the job opportunity was advertised);

* * * * *

■ 4. Amend § 655.71 by revising paragraph (c)(2) as follows:

**§ 655.71 CO-ordered assisted recruitment.**

* * * * *

(c) * * *

(2) Designating the sources where the employer must recruit for U.S. workers, directing the employer to place the advertisement(s) in such sources;

* * * * *

**Kirstjen M. Nielsen,**

*Secretary of Homeland Security.*

**R. Alexander Acosta,**

*Secretary of Labor.*

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**BILLING CODE 4510–FP–P; 9111–97–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Part 655

**[Docket No. ETA–2018–0002]**

**RIN 1205–AB90**

### Modernizing Recruitment Requirements for the Temporary Employment of H–2A Foreign Workers in the United States

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Labor (the Department or DOL) is proposing regulatory revisions that would

modernize the recruitment an employer seeking H–2A nonimmigrant agricultural workers must conduct when applying for a temporary labor certification. In particular, the Department is proposing to replace the print newspaper advertisements that its regulations currently require with electronic advertisements posted on the internet, which the Department believes will be a more effective and efficient means of disseminating information about job openings to U.S. workers. The Department is proposing to replace, rather than supplement, the newspaper requirements because it believes that exclusive electronic advertisements posted on a website appropriate for the workers likely to apply for the job opportunity in the area of intended employment would best ensure that U.S. workers learn of job opportunities.

**DATES:** Comments must be submitted, in writing, on or before December 10, 2018.

**ADDRESSES:** You may send comments, identified by Docket No. ETA–2018–0002 or Regulatory Information Number (RIN) 1205–AB90, by any of the following methods:

*Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments (under ''Help'' > ''How to use *Regulations.gov*'').

*Mail and Hand Delivery/Courier:* Submit written comments and any additional material to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

*Instructions:* Label all submissions with ''RIN 1205–AB90.'' Please submit your comments by only one method.

Please be advised that the Department will post all comments received that relate to this notice of proposed rulemaking (NPRM) on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information (either about themselves or others) such as Social Security Numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the *http://www.regulations.gov* website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that, due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov.*

*Docket:* To read or download comments or other material in the electronic docket, go to *http://www.regulations.gov* website (search using RIN 1205–AB90 or Docket No. ETA–2018–0002). 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 appropriate aids, such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

*Comments under the Paperwork Reduction Act (PRA):* In addition to filing comments with ETA, persons wishing to comment on the information collection (IC) aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503, Fax: (202) 395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov. See* Paperwork Reduction Act section of this proposal for particular areas of interest.

**FOR FURTHER INFORMATION CONTACT:** William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 513–7350 (this is not a toll-free number). 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:**

## I. Background

*A. Legal Framework*

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), establishes the H–2A nonimmigrant visa classification for a worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature.'' 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* 8 U.S.C. 1184(c)(1) and 1188.[1] Among other things, the INA requires the Secretary of Homeland Security to consult with appropriate agencies of the Government—and in particular, DOL—before approving a petition to employ H–2A nonimmigrant agricultural workers. 8 U.S.C. 1184(c)(1). To that end, the Secretary of Homeland Security may not approve a petition to employ H–2A workers unless the petitioning employer has applied to the Secretary of Labor (Secretary) for a certification that:

(A) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1); *see also* 20 CFR 655.100. The Secretary has delegated his statutory responsibility to make this certification—known as a ''temporary labor certification''—to the Assistant Secretary for Employment and Training. Secretary's Order 06–2010 (October 20, 2010). And the Assistant Secretary has, in turn, delegated the authority to the Office of Foreign Labor Certification (OFLC). 20 CFR 655.101.

The INA specifies a number of conditions under which the Secretary cannot grant a temporary labor certification. 8 U.S.C. 1188(b). One such condition is where ''[t]he Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.'' 8 U.S.C. 1188(b)(4). The ''positive recruitment'' that the INA requires ''is

[1] For ease of reference, sections of the INA are referred to by their corresponding section in the United States Code.

in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer.'' 8 U.S.C. 1188(b)(4). An employer's obligation to engage in this recruitment terminates ''on the date the H–2A workers depart for the employer's place of employment.'' *Id.*

Since 1987, the Department has relied on regulations promulgated under the authority of the INA to review and evaluate an application for a temporary labor certification under the H–2A visa classification. 20 CFR part 655, subpart B. The last significant revisions to these regulations, which are published in 20 CFR part 655, subpart B, took effect in 2010, following notice and comment rulemaking. 75 FR 6884 (Feb. 12, 2010) (2010 Final Rule). Pursuant to these regulations, the ''positive recruitment'' mandated by the INA is defined as ''[t]he active participation of an employer or its authorized hiring agent, performed under the auspices and direction of the OFLC, in recruiting and interviewing individuals in the area where the employer's job opportunity is located and any other State designated by the Secretary as an area of traditional or expected labor supply with respect to the area where the employer's job opportunity is located, in an effort to fill specific job openings with U.S. workers.'' 20 CFR 655.103.

The standards and procedures governing the positive recruitment of U.S. workers are set forth in sections 655.151–655.154. These regulations generally require, among other things, that an employer seeking H–2A temporary labor certification (1) place two print advertisements in a newspaper of general circulation serving the area of intended employment, § 655.151(a); (2) contact former U.S. workers who were employed in the previous year, § 655.153; and (3) recruit U.S. workers in up to three additional states designated by the Secretary as states of traditional or expected labor supply, § 655.154.

As relevant here, section 655.151(a) requires an employer seeking an H–2A temporary labor certification to place a print advertisement on two separate days, one of which must be a Sunday, in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and workers likely to apply for the job opportunity. Section 655.151(b) provides that if the employer's job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, OFLC may direct the employer, in place of a Sunday edition, to place a print advertisement in the regularly published daily edition with the widest circulation in the area of intended employment. Both advertisements must meet the minimum content requirements set forth in section 655.152, and the employer is required to maintain documentation of the actual newspaper advertisements in the event of an audit or other review, as required by section 655.167(c)(1)(ii).

In addition, under section 655.154, an employer must conduct positive recruitment within a multistate region of traditional or expected labor supply where an OFLC Certifying Officer (CO) finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Paragraph (c) of this section leaves the precise nature of the additional positive recruitment that an employer must conduct to the discretion of the CO. In practice, however, the Department has generally directed employers to place print advertisements in newspapers with the largest circulations in the states identified by the CO as traditional or expected labor supply states.

*B. Need for New Rulemaking*

The Department is proposing to modernize the recruitment that an employer must conduct under its regulations by replacing print newspaper advertisements with electronic advertisements posted on the internet. After due consideration, the Department believes that advertisements posted on the types of websites described below will reduce burden on employers and applicants, and be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that section 655.151 currently requires.

The Department is basing this proposal on several considerations. First, available data indicates that farmworkers in the United States very rarely, if ever, learn about job opportunities or obtain employment through print newspaper advertisements. According to recent data available from the National Agricultural Workers Survey (NAWS), farmworkers did not identify print newspaper advertisements as a source for obtaining their current job.[2] This data is consistent with the Department's experience conducting audit examinations of labor certifications approved under the current rule, as well as anecdotal evidence that the Department has received from stakeholders, who report that print newspaper advertisements are not an effective method of recruiting prospective U.S. workers for agricultural job opportunities.

Second, available data also suggests that U.S. workers are now much more likely to turn to the internet to search for work than classified advertisements in print newspapers. For instance, a recent survey conducted by the Pew Research Center indicated that 79 percent of Americans research jobs online, whereas only 32 percent use ''ads in print publications,'' and only four percent found ads in print publications to be the most useful tool in obtaining their recent employment.[3] This trend is likely to continue as U.S. workers gain increased and more convenient access to the internet via smartphones and other digital devices,[4] and print newspaper circulation continues to decline.[5] Consequently, classified advertisements in print editions are becoming a less effective means of notifying U.S. workers about available job opportunities.[6] In

[2] *See* U.S. Department of Labor, Employment and Training Administration, Findings from the National Agricultural Workers Survey (NAWS) 2013–2014: A Demographic and Employment Profile of United States Farmworkers (Research Report No. 12, Dec. 2016), available at *https://www.doleta.gov/naws* (last visited June 9, 2018).

[3] Aaron Smith, *Searching for Work in the Digital Era,* Pew Research Center, Nov. 19, 2015, *http://www.pewinternet.org/2015/11/19/searching-for-work-in-the-digital-era/.*

*See also* R. Jason Faberman & Marianna Kudlyak, *What Does Online Job Search Tell Us About The Labor Market?,* Economic Perspectives, Jan. 2016, *https://www.chicagofed.org/~/media/publications/economic-perspectives/2016/ep2016-1-pdf.pdf* (observing that the online job search has become the preferred method of search for nearly all types of job seekers and recent research suggests that it is the new norm for how job seekers find work); Richard Hernandez, *Online Job Search: The New Normal,* Monthly Labor Review (Bureau of Labor Statistics, U.S. Dept. of Labor, Wash. DC), Jan. 2017, *https://www.bls.gov/opub/mlr/2017/beyond-bls/pdf/online-job-search-the-new-normal.pdf* (reporting that the online job search is now the most popular method of job hunting).

[4] In 2018, 89 percent of American adults used the internet, and 77 percent of American adults owned a smartphone, up from just 35 percent in 2011. *See* Internet/Broadband Fact Sheet, Pew Research Center, Feb. 5, 2018, *http://www.pewinternet.org/fact-sheet/internet-broadband/; Mobile Fact Sheet,* Pew Research Center, Feb. 5, 2018, *http://www.pewinternet.org/fact-sheet/mobile/.*

[5] By 2014, fewer than 15 percent of Americans received a daily newspaper. *See* Elaine C. Kamarck and Ashley Gabriele, *The News Today: 7 Trends in Old and New Media,* The Brookings Institution, Nov. 10, 2015, *https://www.brookings.edu/research/the-news-today-7-trends-in-old-and-new-media.*

[6] According to the Pew Research Center, the total circulation of U.S. daily newspapers (print and digital combined) in 2017 was approximately 31 million, down 38 percent from more than 50 million in 2007. Pew Research Center, June 13, 2018, *http://www.journalism.org/fact-sheet/*

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recognition of this fact, many newspapers now offer online classified employment listings using multi-platform content providers, and popular online job search websites power the job boards of thousands of newspaper sites, providing a lower cost recruiting option for employers and job seekers alike.[7]

Finally, electronic advertisements offer employers a less expensive, more convenient means of broadly disseminating information about their job opportunities to potential U.S. workers. Many job search websites offer standard advertising packages for free or at significantly lower marginal costs than the standard print newspaper advertisement, and advertisements can be posted on these sites for longer periods than a typical print newspaper advertisement remains in circulation, providing greater exposure of the employer's job opportunity to U.S. workers at no additional cost to the employer. Moreover, unlike print advertisements, which are subject to publishing deadlines that can delay exposure of the job opportunity to U.S. workers, an electronic advertisement can be posted within minutes or hours of submission to the website.

In light of the foregoing, the Department is proposing to revise the recruitment that an employer must conduct under section 655.151 to replace print newspaper advertisements with the electronic advertisements posted on the internet described below. The Department is also proposing minor amendments to sections 655.167 and 655.225 to conform those sections to the proposed elimination of print newspaper advertisements.

## II. Discussion of Proposed Revisions to 20 CFR Part 655, Subpart B

### *A. Revise Section 655.151 To Replace Newspaper Advertisements With Electronic Advertisements*

The Department is proposing to revise section 655.151(a) to replace the requirement that an employer place print newspaper advertisements with a requirement that the employer advertise its job opportunity on a website that is widely viewed and appropriate for use by workers who are likely to apply for the job opportunity in the area of intended employment. The Department proposes to remove the word ''occupation'' from the text in order to address a possible redundancy in the language. This proposed drafting change is stylistic only, and the Department intends to effect no substantive change by it.

The proposed rule would not mandate that an employer post its advertisement on a specific website. Rather, proposed section 655.151(a) would allow an employer to place an advertisement on any of a variety of websites that are widely viewed and appropriate for use by workers who are likely to apply for the job opportunity in the area of intended employment, including websites operated by state or local agricultural associations, job search websites that advertise agricultural job opportunities, and other classified advertisement websites with sections focused on local jobs.

The Department anticipates that advertisements posted on the types of websites described above will provide greater exposure of agricultural job opportunities to U.S. workers than the print newspaper advertisements that section 655.151 currently requires, because they can be more easily accessed by U.S. workers across a much larger geographic area and for a longer period. The Department included websites operated by state or local agricultural associations as an example of an appropriate website because some state farm bureaus, commissions, and cooperatives provide services that help agricultural employers recruit farm labor for seasonal work, and the Department believes these organizations can be a valuable asset in advertising and coordinating farm labor demands across employers and leveraging social media to connect employers with potential workers in the state or local area.

The Department invites comments on whether it should establish qualifying criteria (*e.g.,* minimum number of unique visitors per month) or more specifically define the types of websites that would fulfill the requirement in proposed section 655.151, and whether the regulation should explicitly exclude advertisements placed on websites of agricultural associations that serve as agents or sole or joint employers of H–2A workers, as defined in section 655.103. The Department also solicits comments on whether, instead of eliminating print newspaper advertisements, it should instead offer electronic advertisements as an alternative means of satisfying the existing advertising requirement in section 655.151. The Department is not proposing this option, given the data and trends discussed in Section I.B., which suggest that electronic advertisements will be more effective in disseminating information about available job opportunities to the American workforce. The Department invites comments on whether there are agricultural employers that lack the technology or internet access necessary to place the electronic advertisements described in the proposed rule, and if so, how the Department should determine whether such employers have met their obligation to engage in positive recruitment of U.S. workers. For instance, the Department could leave current recruitment requirements in place as an option for such employers. The Department solicits comments on whether there are alternative methods that would more broadly and effectively disseminate information about available job opportunities to U.S. agricultural workers.

Proposed section 655.151(b) specifies that an employer's advertisement must be clearly visible on the website's homepage or be easily retrievable using the search tools on the website. Any advertisement that is not clearly visible on the website's homepage must be easily retrievable. The Department will consider an advertisement to be easily retrievable if it can be quickly accessed using a prominently displayed link on the website's homepage or the search tools and filters that are prominently displayed on the website's homepage. Each navigation choice or interaction that a job seeker has with the website should take him or her closer to the job opportunity being advertised, and applicants should be able to quickly locate job vacancies using a number of search criteria, such as occupation, job or position title, geographic location, pay range, and keywords in the job description. The employer must use commonly understood terms and keywords to describe its job opportunity when placing the advertisement, so that U.S. workers who are likely to apply for the position will retrieve the advertisement when using the website's search function.

Proposed section 655.151(b) would also require an employer to post the electronic advertisement for a period of no less than 14 consecutive calendar days. Unlike the print newspaper advertisements that an employer must place under the current rule, which are typically published once, many websites offer standard advertising packages that allow an employer to place an advertisement for a weekly period or up to 30 calendar days for free or at a significantly lower marginal cost

*newspapers/* Newspapers Fact Sheet. Conversely, job search websites today are attracting a far larger pool of potential applicants to find jobs. For example, the top 15 job search websites alone attract nearly 200 million unique visitors each month to search for employment.

[7] *See* Christine Del Castillo, *Does Anyone Advertise Jobs in Newspapers Anymore?,* Workable, May 19, 2016, *https://resources.workable.com/blog/newspaper-job-ads.*

than a standard print newspaper advertisement. Accordingly, the Department anticipates that the consecutive fourteen-day posting period in proposed section 655.151(b) will attract more U.S. workers to job opportunities than the print newspaper advertisements that section 655.151 currently requires, because an employer's job opportunity will be easily accessible to U.S. workers for a longer period than a print newspaper advertisement, at no additional cost to the employer.

Further, in order to ensure that the job opportunity described in the advertisement is readily available to U.S. workers, proposed section 655.151(b) would also require that the advertisement be publicly accessible at no cost to an applicant. To meet this requirement, the website on which the advertisement is placed cannot require U.S. workers to establish personal accounts or make payments of any kind to view the advertisement. The website must also be functionally compatible with the latest commercial web browser platforms and easily viewable on mobile smartphones and similar portable devices. Moreover, like the current rule, proposed section 655.42(b) would require that the advertisement comply with the minimum content requirements set forth in section 655.41.

In order to ensure that an employer retains the evidence necessary to demonstrate compliance with proposed section 655.151(a) and (b), proposed section 655.151(c) would require an employer to print and retain screen shots of the web pages on which its advertisement appears and screen shots of the web pages establishing the path used to access the advertisement. Although the proposed rule does not require employers to submit this documentation to the CO with their recruitment reports, an employer must nevertheless retain this documentation in accordance with section 655.167 and provide it to the Department in the event of an audit or other review.

The proposed section 655.151(d) includes a transition provision that would permit an employer submitting an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019 to elect between placing (a) an electronic advertisement in accordance with the requirements in the proposed rule, or (b) two newspaper advertisements in accordance with existing requirements. Because the Department is proposing to have this rule take effect immediately upon publication of the final rule, the Department is including this transition period to provide flexibility to employers that seek additional time to understand and comply with the proposed regulatory revisions, while simultaneously permitting employers that wish to place electronic advertisements immediately upon the effective date of the final rule the ability to do so. The transition provision is intended to better ensure, among other things, that employers who have purchased newspaper advertising space in advance do not lose the benefit of such purchase.

However, the option to elect between the placement of newspaper and electronic advertisements would apply only to those applications with a start date of need prior to October 1, 2019. All employers submitting an *Application for Temporary Employment Certification* with a start date of need after the transition period ends (*i.e.,* employers with dates of need beginning on or after October 1, 2019) would be required to place an advertisement in accordance with the proposed revisions to section 655.151(a)–(c).

*B. Retain Section 655.154's Requirement for Positive Recruitment*

As previously discussed, employers seeking H–2A temporary labor certification are statutorily required to engage in positive recruitment of U.S. workers in multistate regions of traditional or expected labor supply. Under section 655.154(c), when a job opportunity is located in an area served by traditional or expected labor supply states, the CO will designate no more than three states for each area of intended employment listed on the employer's application and describe the additional positive recruitment steps that the employer must conduct. In determining the specific recruitment steps that an employer must conduct, the CO must consider ''the normal recruitment efforts of non H–2A agricultural employers of comparable or smaller size in the area of intended employment, and the kind and degree of recruitment efforts which the potential H–2A employer made to obtain foreign workers.'' Section 655.154(b). The Department's standard practice has been to require an employer to place print advertisements in newspapers serving the traditional or expected labor supply states designated by the CO, *see* 75 FR at 6930; however, given the data and trends discussed in Section I.B., the Department does not intend to continue this practice. While the Department continues to believe that the CO must evaluate the appropriate locations and methods of recruiting U.S. workers in traditional or expected labor supply states on a case-by-case basis, where the CO determines that an electronic advertisement placed under proposed section 655.151 is a sufficient means of recruiting U.S. workers in the traditional or expected labor supply states identified for the employer's job opportunity, this advertisement will likely fulfill the positive recruitment required by section 655.154.

*C. DOL-Assisted Advertising*

The Department has taken initial steps toward creating an online platform to assist employers in complying with the requirements for electronic advertising under this proposed rule. Pending the outcome of this rulemaking, the Department intends to leverage the latest advertising technologies by establishing a mechanism to make advertising data available to popular job-search websites. Specifically, the Department is evaluating the development of a centralized platform to automate the electronic advertising of approved H–2A job opportunities. The Department anticipates that, once fully developed and implemented, this electronic advertising platform would maintain a standard set of data on each job opportunity that can be integrated with a wide array of job search website technologies. Through this platform, DOL would make available to job-search websites real-time access to the information that employers provide about their job opportunities subject to agreement to abide by terms of service. The companies that operate job-search websites would execute standard protocols to pull new H–2A jobs from the online platform in real time for advertising to U.S. workers. DOL is not proposing to mandate the use of the new electronic advertising platform but instead would make participation voluntary for H–2A employers.

If developed as currently envisioned, the Department expects that employers would provide information about their job opportunities, as part of their H–2A applications for temporary labor certifications, and indicate their intention to use the electronic advertising platform. Employers that elect to use this platform would have information about their job opportunities transmitted by the Department to companies offering to provide advertising services, which in turn would advertise these jobs on the companies' job-search websites.

The Department believes that facilitating employers' use of technology is in the best interest of employers and U.S. workers. Because information about the job opportunity would already be provided at the time of filing the H–2A application for a temporary labor

certification and transmitted by the Department to companies operating these job search websites, the burden associated with placing separate electronic advertisements would be significantly reduced. The goal is to reduce burdens on the regulated community, while ensuring that the maximum number of U.S. workers learn about job opportunities. Having DOL maintain a publicly available list of the companies offering this advertising service, would give U.S. workers and other organizations that provide employment placement services a greater degree of certainty regarding where these temporary or seasonal jobs will be advertised and available for U.S. workers to apply. Employers that elect to use the new platform would satisfy the advertising requirement in § 655.151. Finally, offering this platform to employers would ensure more uniform compliance with advertising requirements.

The Department is not soliciting comments on this electronic advertising platform at this time, but will inform the public about the advertising platform's completion through notices in the **Federal Register**.

*D. Other Minor Changes for Conformity*

The Department is proposing minor revisions to two other sections to conform with the proposed changes to section 655.151. First, the Department is proposing to make a technical amendment to section 655.167(c)(1)(ii), which specifies document retention requirements, to delete a reference to print advertisements in professional, trade, or ethnic publications, and to correct the text's cross-reference to another regulatory provision. Currently, the regulation directs employers to retain ''advertising as specified in § 655.152.'' But the reference to ''655.152'' is incorrect, as that provision provides the content requirements. The advertising requirement is specified in § 655.151. Accordingly, the text should properly read ''advertising as specified in § 655.151.''

Second, the Department is proposing to amend 655.225(d), which specifies the post-acceptance requirements for positions engaged in the herding or production of livestock on the range, to delete the reference to ''a newspaper of general circulation serving the area of intended employment,'' in order to conform with the proposed change to the advertisements required by section 655.151.

## III. Administrative Information

*A. Administrative Procedure Act*

The Department proposes to claim an exception under 5 U.S.C. 553(d)(1) from the 30-day delayed effective date requirement on the basis that this rule relieves the restriction against online advertising of jobs for which an employer seeks to hire H–2A workers. The final rule would relieve regulated parties of the requirement that they only place paper advertisements in newspapers of general circulation in the area of intended employment. During the transition period, which would apply to all employers who file an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019, the rule would allow employers to select between placing two paper newspaper advertisements or placing an online advertisement. After the transition period ends, the rule would altogether replace the newspaper advertising requirement with online advertising, which is anticipated to be more cost-effective and flexible for employers, as well as a more effective way of reaching U.S. workers who may be able, willing, and qualified for the employers' job opportunities. The online advertising would also provide flexibility for U.S. workers who are job seekers to identify and apply for the job opportunities for which employers seek to hire H–2A workers. The Department anticipates that allowing employers additional time to transition away from advertising by newspaper over an approximately six-month period after the rule's publication would provide needed flexibility, and thus provide employers with notice and time to conform their business practices to the new rule. Therefore, this rule would take effect immediately upon publication of the final rule.

*B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Sec. 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* OMB has determined that this proposed rule is a significant, but not economically significant, regulatory action under Sec. 3(f) of E.O. 12866. Consequently, OMB has reviewed this rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action because the cost savings to H–2A employers associated with the rule are larger than the costs. The estimated cost savings associated with this regulatory action are derived from the proposed revision to section 655.151(a), which would replace print newspaper advertisements with electronic advertisements posted on the internet.

1. Subject-by-Subject Analysis

The Department's analysis below considers the expected impacts of the following aspects of the proposed rule against the baseline (*i.e.,* the 2010 Final Rule): (a) The replacement of newspaper advertisements with electronic advertisements, and (b) the time it takes the regulated community to read and review the rule.

a. Electronic Advertisements

The Department is proposing to modernize the positive recruitment that an employer must conduct under its regulations by eliminating the use of

print newspaper advertisements and replacing it with electronic advertisements posted on the internet, which will make the job opportunity more broadly available to U.S. workers. Specifically, the Department is proposing to revise section 655.151(a) to replace print newspaper advertisements requirements with a requirement for an electronic advertisement posted on a website that is widely viewed and appropriate for use by workers who are likely to apply for the job opportunity in the area of intended employment. As discussed in section I.B. of this NPRM, the basis for this proposal is rooted in the Department's determination that electronic advertisements will be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that its regulations currently require.

i. Cost Savings

To estimate the cost savings to employers that would result from the proposed rule, the Department first calculated the average number of H–2A temporary labor certifications approved in Fiscal Year (FY) based on data from FY 2015–2017, which yielded an annual average of 9,796.[8] Next, the Department identified the top five states in which prospective H–2A employers received temporary labor certifications, and it researched the cost of placing a newspaper advertisement in the most populous city in each of these states (for several newspapers, including large and local papers) that would satisfy the content requirements set forth in section 655.152.[9] The Department then averaged the data it obtained to estimate the average cost of complying with section 655.151. Based on these data, the Department determined that the average cost of placing the newspaper advertisements required by section 655.151 is $672 (or $336 for each advertisement).

As mentioned above, the Department believes, based on preliminary research, employers can choose to advertise using online job search websites free of charge, so removing the requirement to advertise in a print newspaper would result in a cost savings equal to the cost of complying with the current regulation.[10] Although section 655.151 currently requires employers to advertise on two consecutive days, one of which must be a Sunday, the Department did not identify a significant difference in cost between advertisements placed on Sundays and weekdays, so the Department did not distinguish between these two costs when calculating total advertising cost savings. To estimate the annual cost savings of newspaper advertising costs that employers will avoid under the proposed rule, the Department multiplied the average annual number of approved H–2A temporary labor certifications (9,796) by the average newspaper advertising cost of $672. This yielded an average annual cost savings of $6.58 million.

b. Time To Understand Rule

During the first year that this rule would be in effect, employers seeking H–2A workers would need time to learn about the new requirements. The Department assumes that many employers participating in the H–2A program would learn about the requirements of the new rule from an industry newsletter or bulletin. The Department assumes that the amount of time required to understand the rule change to be 10 minutes. The proposed rule addresses only the job advertising requirements for employers seeking H–2A workers.

i. Costs

This requirement represents a cost to employers participating in the H–2A program in the first year of the rule. The Department estimates this cost by multiplying the time required to read and review the new rule (10 minutes) by the median hourly wage of a human resources manager at an agricultural business ($31.84),[11] multiplied by a factor of two (2) to account for fringe benefits and overhead, which yields a cost of $10.61 per employer. The Department estimates the total cost of reading and reviewing the rule by multiplying $10.61 by the average number of employers participating in the H–2A program over FY 2015–2017 (6,676). This calculation results in a cost of $70,855 in the first year.

DOL acknowledges, however, that there are some potentially limited situations—particularly in rural communities—where the upfront costs associated with accessing the internet and learning how to post such advertisements may result in notable opportunity costs for employers. DOL believes that very few employers do not have access to the internet. For those employers that do not currently have internet access, DOL estimates that it will take two hours to access the internet (which may include transportation to the nearest library), research the websites and pick one to use, establish an account on that website, learn how to post a job on the website, and establish an email account. In addition, employers would need to make additional trips to check for responses from U.S. workers. For employers with access to the internet who are not familiar with posting such advertisements online, there will be some up-front costs associated with the time it takes to research job advertisement sites, establish an account, and learn how to post a job on the website.

Because of the uncertainties, we are unable to provide an estimate of the number of employers who do not have access to the internet, or those who have access to the internet but are unfamiliar with posting jobs online, and would incur these additional costs to post advertisements online. DOL seeks comment from the public on the likely magnitude and incidence of these costs. However, online advertisements for H–2A employment would increase the visibility of job openings to potential U.S. workers and increase the number of workers that would be able to access these jobs. This benefit would significantly outweigh any cost potentially incurred by the negligible number of employers that might be affected by the transition from print newspaper advertisements to online job postings. The Department therefore believes that the net societal benefit of implementing this rule would be maximized if all H–2A employers are required to utilize online advertisements. As such this rule constitutes as a deregulatory action.

2. Summary of Impacts

The Department estimates the total first-year costs of the proposed rule to be $70,855. This cost results from the time required to read and review the proposed rule. This cost is incurred by employers seeking H–2A workers subject to proposed 655.151(a). The Department estimates first-year cost savings of $6.58 million. This cost savings results from replacing the requirement that employers place print newspaper advertisements with a requirement that employers place internet advertisements. Net first-year

[8] The average is based on 8,721 H–2A temporary labor certifications in FY 2015; 9,751 temporary labor certifications in FY 2016; and 10,917 temporary labor certifications in FY 2017. *See https://www.foreignlaborcert.doleta.gov/performancedata.cfm.*

[9] The top 5 states in which employers seek to place H–2A workers are California, Florida, Georgia, North Carolina, and Washington.

[10] The Department has data on three commonly used job-search websites that allow employers to advertise free of charge.

[11] Wage derived from Bureau of Labor Statistics median hourly wage for HR Specialists (occupation code 13–1071), May 2017.

cost savings amount to $6.51 million. This estimated cost savings excludes any increase in costs to employers without current access to the internet and any up-front costs incurred by those unfamiliar with posting job advertisements online who need to establish accounts, and invest time in learning how to post online.

Generally, annual cost savings are expected to be $6.58 million in all years following the first year due to the lack of monetized costs regarding the time required to read and review the proposed rule. The 10-year discounted net cost savings of the proposed rule range from $46.15 million to $56.06 million (with 7- and 3-percent discount rates, respectively). The annualized net cost savings of the proposed rule is $6.57 million (with 3- and 7-percent discount rates). When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of this proposed rule are $6.57 million at a discount rate of 7 percent (excluding any up-front familiarization costs or increased costs to employers without access to the internet).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

This proposed rule may impact small businesses that request H–2A temporary labor certifications. The Department assumed that the average number of H–2A temporary labor certifications requested by any small business per year would be one. The Department estimates that small businesses would incur a one-time cost of $10.61 to familiarize themselves with the rule and would incur annual cost savings of $672 associated with advertising online rather than in print newspapers. Over a 10-year period, the net annualized cost savings for a small business would be $672 at a 7-percent discount rate.

The Department reviewed the impacts of the proposed rule for two North American Industry Classification System (NAICS) Codes that frequently request H–2A temporary labor certifications—NAICS 115115: Farm Labor Contractors & Crew Leaders, and NAICS 111998: All Other Miscellaneous Crop Farming. The Small Business Administration (SBA) estimates that revenue for a small business with NAICS Code 115115 is $15 million and for NAICS Code 111998 is $750,000.[12] The impact of the proposed rule would be less than 1 percent of annual revenue for the small businesses in these industries with the employment size fewer than 5 ($710,717 for NAICS 115115 and $430,835 for NAICS 11).[13] Based on this determination, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval using emergency clearance procedures outlined at 5 CFR 1320.13.

More specifically, this rule proposes to replace print newspaper advertisements with an advertisement posted on a website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment. The proposed rule would require that this advertisement be clearly visible on the website's homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the advertising content requirements set forth in § 655.152. Under the proposed rule and in accordance with 20 CFR 655.167(c)(1)(ii), an employer would be required to retain documentation demonstrating that it posted an electronic advertisement in compliance with the requirements in the proposed rule, including screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement. The employer must be prepared to produce all information and records contained in this information collection for the Department or other federal agencies in the event of an audit examination, investigation, or other enforcement proceedings in the H–2A program. The Department is using technology to reduce burden by replacing newspaper advertisements with electronic advertisements. The information collection requirements associated with this rule are summarized as follows:

*Agency:* DOL–ETA.

*Type of Information Collection:* New.

*Title of the Collection:* Advertising Requirements for Employers Seeking to Employ H–2A Nonimmigrant Workers.

*Agency Form Number:* None.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 9,796.

*Average Responses per Year per Respondent:* 2.

*Total Estimated Number of Responses:* 19,592.

*Average Time per Response:* 7 minutes per application.

*Total Estimated Annual Time Burden:* 1,142 hours.

*Total Estimated Other Costs Burden:* $0.

*E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

[12] U.S. Small Business Administration. (2017). *Table of Small Business Size Standards Matched to North American Industry Classification System Codes.* Retrieved from: *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

[13] U.S. Census, *2012 SUSB Annual Data Tables by Establishment Industry, https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.*

This NPRM, if finalized, does not exceed the $100 million expenditure in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Department has not prepared a statement under the Act.

*F. Small Business Regulatory Enforcement Fairness Act of 1996*

This NPRM, if finalized, is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This proposed rule has not been found to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

*G. Executive Order 13132: Federalism*

This NPRM, if finalized, does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

*H. Executive Order 13175, Indian Tribal Governments*

This NPRM, if finalized, does not have ''tribal implications'' because it 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. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

*I. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

This NPRM, if finalized, will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

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

This NPRM, if finalized, will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

*K. Environmental Impact Assessment*

This action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This action is therefore categorically excluded from further review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375.

*L. Executive Order 13211, Energy Supply*

This NPRM, if finalized, has not been identified to have impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

*M. Executive Order 12630, Constitutionally Protected Property Rights*

This NPRM, if finalized, will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

*N. Executive Order 12988, Civil Justice Reform Analysis*

This NPRM, if finalized, was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Department has determined that this proposed rule meets the applicable standards provided in section 3 of Executive Order 12988.

**List of Subjects in 20 CFR Part 655**

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

■ For the reasons stated in this document, 20 CFR part 655 is proposed to be amended as follows:

## PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; sec. 205 of division M, Pub. L. 115–141, 132 Stat. 348; 8 CFR 2.1, 214.2(h)(4)(i), and 214.2(h)(6)(iii).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Revise § 655.151 to read as follows:

**§ 655.151 Advertising in the area of intended employment.**

(a) *Where to conduct recruitment.* The employer must place an advertisement for the job opportunity on at least one website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment.

(b) *Nature of the recruitment.* The advertisement must be clearly visible on the website's homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the requirements set forth in § 655.152.

(c) *Proof of recruitment.* An employer must retain documentation in accordance with § 655.167(c)(1)(ii) that demonstrates compliance with paragraphs (a) and (b) of this section. Such documentation must include screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement.

(d) *Transition period for applications with dates of need prior to October 1, 2019.* (1) All employers submitting an *Application for Temporary Employment Certification* with a date of need on or after October 1, 2019 must place and retain documentation of an electronic advertisement in accordance with paragraphs (a) through (c) of this section.

(2) An employer submitting an *Application for Temporary Employment Certification* with a date of need prior to October 1, 2019 may elect to place two newspaper advertisements in compliance with the requirements in paragraphs (d)(2)(i) and (ii) of this section, in lieu of placing and retaining documentation of the electronic advertisement required by paragraphs (a) through (c) of this section.

(i) The employer must place an advertisement (in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (d)(2)(ii) of this section), in a newspaper of general circulation serving the area of intended employment and is appropriate to the occupation and the workers likely to apply for the job opportunity. Newspaper advertisements must satisfy the requirements set forth in § 655.152.

(ii) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

■ 3. Amend § 655.167 by revising paragraph (c)(1)(ii) to read as follows:

**§ 655.167 Document retention requirements.**

* * * * *

(c) * * *

(1) * * *

(ii) Advertising as specified in § 655.151;

* * * * *

■ 4. Amend § 655.225 by revising paragraph (d) to read as follows:

**§ 655.225 Post-acceptance requirements for herding and range livestock.**

* * * * *

(d) The employer will not be required to place an advertisement as required in § 655.151.

* * * * *

**Molly E. Conway,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2018–24497 Filed 11–8–18; 8:45 am]

**BILLING CODE 4510–FP–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 49 and 52

**[EPA–R09–OAR–2018–0590; FRL–9986–21–Region 9]**

## Revisions to the Source-Specific Federal Implementation Plan for Navajo Generating Station, Navajo Nation

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing limited revisions to the source-specific federal implementation plan (FIP) that regulates emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the reservation lands of the Navajo Nation near Page, Arizona. We are proposing to lower the emission limitation for particulate matter (PM) to conform to the most stringent emission limitation currently applicable to NGS under another EPA regulation, and to replace the opacity limitation and annual PM source testing requirement with a requirement to demonstrate compliance with the lower PM emission limitation using a continuous emission monitoring system for particulate matter.

**DATES:** Any comments on this proposal must arrive by December 10, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–R09–OAR–2018–0590, at *http://www.regulations.gov,* or via email to *lee.anita@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the EPA's full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Anita Lee, EPA Region IX, (415) 972–3958, *lee.anita@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

### Table of Contents



### I. Background

#### *A. Action*

In this action, the EPA is proposing limited revisions to the FIP for NGS that we promulgated on October 3, 1991 (''1991 FIP''), March 5, 2010 (''2010 FIP''), and August 8, 2014 (''2014 FIP'').[1] The provisions of the 1991 action are codified in the Code of Federal Regulations (CFR) at 40 CFR 52.145(d), and the 2010 and 2014 regulations are codified at 40 CFR 49.5513. We refer collectively to the provisions from the 1991, 2010, and 2014 actions as the ''FIP'' or the ''NGS FIP.'' The NGS FIP includes federally enforceable emission limitations for PM, opacity, sulfur dioxide ($SO_2$), and oxides of nitrogen ($NO_X$).

Generally, the EPA is proposing to move provisions from the 1991 FIP to a different section of the CFR and to

[1] *See* 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 79 FR 46552 (August 8, 2014).

update certain provisions in the 1991 FIP to be consistent with recent national rulemakings. Specifically, we are proposing to move the 1991 FIP provisions from 40 CFR 52.145(d) to 40 CFR 49.5513. If finalized, the effect of our action will be to move requirements for NGS from subpart D of part 52, which contains the state implementation plan (SIP) provisions for Arizona, to subpart L of part 49, which contains source-specific FIP requirements for NGS, to consolidate all of the applicable requirements for NGS in one section of the CFR. We are proposing to update the definition of ''boiler operating day'' in the 1991 FIP to be consistent with the definition in the 2014 FIP.[2]

In addition, we are proposing to revise the PM compliance demonstration from annual source testing to the use of PM continuous emissions monitoring systems (PM CEMS), which were installed and calibrated on each of the three units at the facility in 2016. We are also proposing to lower the PM emission limitation in the 2010 FIP from 0.060 pounds per million British thermal units (lb/MMBtu) to 0.030 lb/MMBtu. This lower emission limitation already applies to NGS pursuant to the EPA's Mercury and Air Toxics Standard (MATS) Rule.[3] Because the operator of NGS will be using PM CEMS to demonstrate compliance with the 0.030 lb/MMBtu emission limitation for PM, the EPA is also proposing to remove the opacity emission limitation and associated continuous opacity monitoring system (COMS) requirements from the NGS FIP. The opacity limitation and COMS have generally functioned as surrogates for ensuring compliance with PM emission limitations. This proposed revision is consistent with the provisions related to PM CEMS and opacity in the New Source Performance Standard for Electric Utility Steam Generating Units (''NSPS for EGUs'') and the Acid Rain Program requirements at 40 CFR 75.14(e), which generally provide that any owner or operator that elects to install, calibrate, maintain, and operate a PM CEMS for demonstrating compliance with a sufficiently stringent PM emission limitation (*i.e.,* 0.030 lb/MMBtu or lower) need not meet the opacity limit and monitoring requirements.[4]

Finally, we are proposing to clarify requirements that have already been satisfied (*e.g.,* a one-time requirement that has been met to submit a description of dust suppression methods to the Regional Administrator) and update the addresses to which the owner or operator must submit reports.

### *B. Facility*

NGS is a coal-fired power plant located on the reservation lands of the Navajo Nation, just east of Page, Arizona, and approximately 135 miles north of Flagstaff. NGS is co-owned by several entities and operated by Salt River Project (SRP).[5] The facility currently operates three units, each with a capacity of 750 megawatts (MW) net generation, providing a total capacity of 2250 MW. Operations at the facility produce air pollutant emissions, including emissions of $SO_2$, $NO_X$, and PM. Existing pollution control equipment at NGS includes wet flue gas desulfurization units for $SO_2$ and PM removal, electrostatic precipitators for PM removal, and low-$NO_X$ burners with separated over-fire air to reduce $NO_X$ formation during the combustion process. In the future, the owner or operator of NGS will be taking steps to reduce emissions of $NO_X$ further, pursuant to the requirements of the 2014 FIP.

### *C. Attainment Status*

The area around NGS is designated attainment, unclassifiable/attainment or unclassifiable for all criteria pollutants under the Act.[6]

### *D. The EPA's Authority To Promulgate a FIP in Indian Country*

When the CAA was amended in 1990, Congress included a new provision, section 301(d), granting the EPA authority to treat tribes in the same manner as states where appropriate.[7] In 1998, the EPA promulgated regulations known as the Tribal Authority Rule (TAR).[8] The EPA's promulgation of the TAR clarified, among other things, that state air quality regulations generally do not, under the CAA, apply to facilities located anywhere within the exterior boundaries of Indian reservations.[9] Prior to the addition of section 301(d) and the promulgation of the TAR, some states had mistakenly included emission limitations in their SIPs that they may have believed could apply under the CAA to private facilities operating on adjacent Indian reservations.

In the preambles to the proposed and final 1998 TAR, the EPA generally discussed the legal basis in the CAA that authorizes the EPA to regulate sources of air pollution in Indian country.[10] The EPA concluded that the CAA authorizes the EPA to protect air quality throughout Indian country.[11] The TAR, therefore, provides that the EPA ''[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections [301](a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.'' [12]

### *E. Historical Overview of NGS FIP Actions*

On December 2, 1980, EPA issued regulations addressing visibility

[2] *See* 40 CFR 52.145(d)(1) and 40 CFR 49.5513(j)(2)(iii).

[3] *See* 77 FR 9303 (February 16, 2012) and 81 FR 20172 (April 6, 2016) (Final Technical Corrections).

[4] *See* NSPS for EGUs at 40 CFR 60.42Da and the Acid Rain Program requirements at 40 CFR part 75. Subpart Da to part 60 is the ''Standard of Performance for Electric Utility Steam Generating Units'' and applies to units that are capable of combusting more than 73 MW heat input of fossil fuel and for which construction, modification, or reconstruction commenced after September 18, 1978. The units at NGS were constructed prior to 1978 and are not subject to part 60 subpart Da. The NGS units are subject to the Acid Rain Program requirements of CAA Title IV, but are eligible for an exemption from the requirement for COMS in CAA section 412(a), pursuant to 40 CFR 75.14.

[5] Currently, the participants in NGS are the United States Bureau of Reclamation, SRP, Arizona Public Service Company, Tucson Electric Company, and NV Energy. SRP, which serves as the facility operator, recently increased its ownership share after it purchased the shares previously owned by the Los Angeles Department of Water and Power.

[6] *See* 40 CFR 81.303.

[7] *See* 40 U.S.C. 7601(d).

[8] *See* 40 CFR parts 9, 35, 49, 50, and 81. *See also* 63 FR 7254 (February 12, 1998).

[9] *See* 63 FR 7254 at 7258 (noting that unless a state has explicitly demonstrated its authority and has been expressly approved by the EPA to implement CAA programs in Indian country, the EPA is the appropriate entity to implement CAA programs prior to tribal primacy), *Arizona Public Service Company* v. *EPA.,* 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied sub nom, Michigan* v. *EPA.,* 532 U.S. 970 (2001) (upholding the TAR); *see also Alaska* v. *Native Village of Venetie Tribal Government,* 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with federal government and tribes, not with states).

[10] *See* 59 FR 43956 (August 25, 1994); 63 FR 7253 (February 12, 1998).

[11] *See* 63 FR 7253 at 7262 (February 12, 1998); 59 FR 43956 at 43960–43961 (August 25, 1994) (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)).

[12] *See* 63 FR at 7273 (codified at 40 CFR 49.11(a)). In the preamble to the final TAR, the EPA explained that it was inappropriate to treat tribes in the same manner as states with respect to section 110(c) of the Act, which directs the EPA to promulgate a FIP within 2 years after the EPA finds a state has failed to submit a complete state plan or within 2 years after the EPA disapproval of a state plan. Although the EPA is not required to promulgate a FIP within the 2-year period for tribes, the EPA promulgated 40 CFR 49.11(a) to clarify that the EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. *See* 63 FR at 7264–65.

impairment that is traceable or ''reasonably attributable'' to a single source or small group of sources.[13] These regulations required a number of states to submit SIPs no later than September 2, 1981. Most states, including Arizona, failed to submit SIPs as called for by the regulations. Accordingly, in 1987, the EPA issued visibility FIPs consisting of general plan requirements and long-term strategies for 29 states including Arizona.[14]

In 1989, based on a report submitted by the National Park Service, the EPA proposed to find that a portion of the visibility impairment in Grand Canyon National Park was reasonably attributable to NGS.[15] Under the 1991 FIP, NGS was required to phase-in compliance with the $SO_2$ emission limit, by installing scrubbers in 1997, 1998, and 1999.[16] In establishing the $SO_2$ emission limit for NGS in the final 1991 FIP, the EPA determined that the FIP would provide for greater reasonable progress toward the national visibility goal than implementation of Best Available Retrofit Technology (BART).[17]

On September 8, 1999, the EPA proposed a source-specific FIP for NGS.[18] The 1999 proposed FIP stated: ''Although the facility has been historically regulated by Arizona since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes.'' The EPA intended for the proposed action in 1999 to ''federalize'' the emission limitations that Arizona had erroneously included in its SIP.[19] The EPA received comments on the proposed FIP but did not finalize the proposal.

In 2006, the EPA published a new proposed rule to promulgate federally enforceable numerical emission limitations for PM and $SO_2$ and took action to finalize it in 2010.[20] The 2010 FIP also established an opacity limit and a requirement for specific control measures to limit dust emissions. In the 2010 FIP, the EPA determined that the emission limitations for PM and $SO_2$ were more stringent than, or at least as stringent as, the emission limitations that had historically applied at NGS pursuant to an operating permit issued by Arizona. Therefore, the EPA concluded that air quality in this area would be positively impacted by the 2010 FIP.[21]

On August 8, 2014, the EPA promulgated a final rule that established limits for $NO_X$ emissions from NGS under BART provisions of the Regional Haze Rule.[22] We finalized an alternative to BART based on agreed-upon recommendations developed by a group of diverse stakeholders. The 2014 FIP limits emissions of $NO_X$ from NGS by establishing a long-term facility-wide cap on total $NO_X$ emissions from 2009 to 2044 and requires the implementation of one of several alternative operating scenarios to ensure that the 2009 to 2044 cap is met.

## II. Basis for Proposed Action

In this proposed FIP revision, the EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a). The EPA is proposing that it is necessary or appropriate to revise the FIP for NGS to be more consistent with the MATS Rule and the NSPS for EGUs. In particular, we are proposing to require the use of PM CEMS to demonstrate compliance with a lower PM emission limitation and remove the opacity limitation and COMS monitoring requirement, which has served as a surrogate for a compliance demonstration for the PM emission limitation. As explained in the preamble to the 2010 FIP establishing the opacity limitation and COMS requirement, water droplets, which are present in the NGS stacks because of the $SO_2$ scrubbers, can cause inaccurate excess emission readings from the COMS.[23] Therefore, the PM CEMS would provide a better continuous demonstration of compliance with the PM emission limitation than an opacity limit and COMS.

For the reasons set forth above, we are proposing to find that limited revisions to the FIP for NGS are necessary or appropriate to further protect air quality on the Navajo Nation.

## III. Summary of FIP Provisions

### *A. Proposed FIP Revisions*

The EPA is proposing the following limited revisions to the FIP for NGS at 40 CFR 52.145(d) and 40 CFR 49.5513. We have included two documents in the docket for this proposed rulemaking that show the original text of 40 CFR 52.145(d) and 40 CFR 49.5513 and the EPA's proposed revisions to those provisions.[24]

1. Revisions to 40 CFR 52.145(d)

The EPA is proposing to move the 1991 FIP promulgated at 40 CFR 52.145(d) to 40 CFR 49.5513(k) to consolidate the NGS FIP requirements in a single section of the CFR. We are also proposing to revise 40 CFR 52.145(d) by changing internal citations referring to paragraph (d) to refer instead to paragraph (k). For clarity, in this action we continue to refer to the 1991 FIP as designated in 40 CFR 52.145(d).

In addition, we are proposing to revise the definition of boiler operating day in paragraph 52.145(d)(1) to be consistent with its definition in the 2014 FIP.

2. Revisions to 40 CFR 49.5513(b)

Under paragraph (b) of 40 CFR 49.5513, we are proposing to clarify that the applicable compliance date for this section is April 5, 2010, which was the original effective date for this section, unless otherwise specified within specific provisions in 40 CFR 49.5513.

3. Revisions to 40 CFR 49.5513(d)

In 40 CFR 49.5513(d)(2), we are proposing to revise the emission limitation for PM from 0.060 lb/MMBtu to 0.030 lb/MMBtu, add a compliance date for this revised limit, and remove specifications related to PM testing. In 40 CFR 49.5513(d)(3), we are proposing to remove the compliance date for submitting to the EPA a dust suppression plan and to clarify the status of this plan, which the owner or operator submitted on June 4, 2010 and revised on February 2, 2015.[25] The final revision we are proposing to 40 CFR 49.5513(d) is to remove the opacity limit and exclusions for water vapor in paragraph (4).

4. Revisions to 40 CFR 49.5513(e)

In 40 CFR 49.5513(e)(1), we are proposing to delete the requirement to

[13] 45 FR 80084 (December 2, 1980), codified at 40 CFR 51.300–51.307.

[14] *See* 52 FR 45132 (November 24, 1987).

[15] 56 FR 50172 (October 3, 1991), codified at 40 CFR 52.145.

[16] 40 CFR 52.145(d)(7).

[17] 56 FR 50172 (October 3, 1991).

[18] *See* 64 FR 48725 (September 8, 1999).

[19] 64 FR 48725 at 48727.

[20] 75 FR 10179 (March 5, 2010) codified at 40 CFR 49.24(a) through (i) and redesignated to 40 CFR 49.5513(a) through (i). *See* 76 FR 23879 (April 29, 2011).

[21] 75 FR 10174 (March 5, 2010).

[22] 79 FR 46514 (August 8, 2014).

[23] *See* 75 FR 10175. We also explained that, ''NGS will continue to have a requirement to operate COMs on each stack since the COMs do operate properly during start-up and at other times when the $SO_2$ scrubbers are bypassed for maintenance purposes . . . Therefore, in the final rule excess opacity due to uncombined water droplets in the stack does not constitute an exceedance, but it will be reported on the quarterly excess emissions reports.'' 75 FR 10177. *See also,* 40 CFR 49.5113(f)(4).

[24] *See* documents titled ''2018 NGS part 49 FIP RLSO.docx'' and ''2018 part 52 FIP RLSO.docx'' in the docket for this rulemaking.

[25] *See* Part 71 Federal Operating Permit Draft Statement Of Basis Navajo Generating Station Permit No. NN–OP–15–06 (September 2015), p. 15.

operate COMS. In 40 CFR 49.5513(e)(2), we are proposing to replace the existing specifications related to annual PM testing with a requirement to demonstrate compliance with the PM emission limit in 40 CFR 49.5513(d)(2) using PM CEMS in accordance with 40 CFR part 63 subpart UUUUU and add a compliance date for this requirement. Under 40 CFR 49.5513(e)(4), we are proposing to remove the provision related to COMS. Under 40 CFR 49.5513(e)(8), we are proposing to correct an outdated reference.

5. Revisions to 40 CFR 49.5513(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to provide additional clarity that all reports and notifications required in 40 CFR 49.5513(f), (f)(2), and (f)(4), should be reported to the Navajo Nation Environmental Protection Agency (NNEPA) and the EPA. We are also revising 40 CFR 49.5513(f) to update addresses for reporting to the EPA. In addition, in 40 CFR 49.5513(f)(4), consistent with the proposed removal of the opacity emission limitation and COMS requirement in 40 CFR 49.5513(d) and (e), we are proposing to replace a requirement to submit excess opacity reports as recorded by COMS with a requirement to submit excess emission reports for PM as recorded by CEMS, and to remove additional provisions related to the COMS.

6. Revisions to 40 CFR 49.5513(j)

Under 40 CFR 49.5513(j)(8), we are proposing to remove addresses for the NNEPA and the EPA that are already provided in 40 CFR 49.5513(f) and to require that all reports and notifications under 40 CFR 49.5513(j) be submitted to the NNEPA and the EPA in accordance with 40 CFR 49.5513(f).

*B. Justification for Proposed FIP Revisions*

1. Revisions to 40 CFR 52.145(d)

We are proposing to move the 1991 FIP from 40 CFR 52.145(d) to 40 CFR 49.5513(k). The 1991 FIP was originally codified in 40 CFR part 52 subpart D, which contains the SIP provisions for the state of Arizona. The provisions at 52.145 relate to visibility protection and paragraph (d) pertains to the control of $SO_2$ emissions from NGS based on the effects of those emissions on visibility at Grand Canyon National Park. Because the EPA has subsequently promulgated FIP requirements for NGS in 40 CFR part 49 subpart L, for regulatory clarity, we are proposing to move the $SO_2$ requirements from the 1991 FIP to the same part of the CFR as the implementation plans in Indian country, including the FIP requirements for NGS promulgated in 2010 and 2014. This move will not relax any existing FIP requirements for NGS and will have no effect on air quality in the area surrounding NGS.

Throughout 40 CFR 52.145(d), the provisions include internal citations referring to specific subparagraphs in paragraph (d). Consistent with our proposal to move the provisions from the 1991 FIP to 40 CFR 49.5513(k), we are also proposing to revise the internal citations that currently refer to paragraph (d) (*i.e.,* 40 CFR 52.145(d)) to refer instead to paragraph (k) (*i.e.,* 40 CFR 49.5513(k)). This proposed revision will not relax any existing FIP requirements for NGS and will have no effect on air quality in the area surrounding NGS.

We are also proposing to revise a definition of boiler operating day in 40 CFR 52.145(d)(1). The term is currently defined as a 24-hour calendar day during which coal is combusted in that unit for the entire 24-hours. We are proposing to revise the definition to mean a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time, such that it is not necessary for fuel to be combusted the entire 24-hour period. This revised definition, if finalized, would be identical to the definition of boiler operating day promulgated in the 2014 FIP and would be consistent with the recent changes to the definition promulgated by the EPA elsewhere (*e.g.,* the NSPS for EGUs).

2. Revisions to 40 CFR 49.5513(b)

Under paragraph (b) of 40 CFR 49.5513, we are proposing to add a statement to the compliance dates specifying that compliance with the requirements of the section is required by April 5, 2010, which was the original effective date for this section, unless otherwise specified within specific provisions in 40 CFR 49.5513. Because the FIP provisions for NGS promulgated in 1991, 2010, and 2014 all have different compliance dates, we are proposing to revise this provision for regulatory clarity. The compliance date for the FIP provisions for NGS promulgated in 2010 would remain April 5, 2010, while the deadlines for the 1991 and 2014 FIPs would remain as specified in paragraphs 40 CFR 52.145(d)(6) and 49.5513(j) respectively. The compliance dates for the revised PM limit and PM CEMS requirements would be specified in paragraphs 40 CFR 49.5513(d)(2) and (e)(2), as explained below. This proposed revision would not relax any existing FIP requirements for NGS and would have no effect on air quality in the area surrounding NGS.

3. Revisions to 40 CFR 49.5513(d)

In 40 CFR 49.5513(d)(2), we are proposing to revise the PM emission limitation from 0.060 lb/MMBtu to 0.030 lb/MMBtu for consistency with the numerical PM emission limitation in the MATS Rule. The current applicable emission limitation for PM in the 2010 FIP is higher than the PM emission limitation in the MATS Rule. Revising the PM emission limitation in 40 CFR 49.5513(d)(2) to 0.030 lb/MMBtu will make the PM emission limitation in the FIP conform to the applicable, more stringent emission limitation in the MATS Rule. The EPA anticipates this will not result in any substantive change in the applicable requirements or the method of PM control for this facility. We propose to require compliance with this limitation in the FIP by the effective date of the final FIP. In 40 CFR 49.5513(d)(2), we are also proposing to delete the current provisions related to PM emissions testing. The requirements for demonstrating compliance with the PM emission limitation are instead addressed in 40 CFR 49.5513(e). In 40 CFR 49.5513(d)(3), we are proposing to clarify the requirement for submitting to the EPA a dust suppression plan.

In 40 CFR 49.5513, we are proposing to remove paragraph (d)(4), which contains provisions related to the opacity limit. In 2016, SRP installed and calibrated PM CEMS on each unit at NGS. We are proposing to remove the opacity limit from the NGS FIP because in 40 CFR 49.5513(e)(2), we are proposing to add a new requirement to operate the PM CEMS on each unit to demonstrate compliance with the PM emission limitation of 0.030 lb/MMBtu. This provision is consistent with the NSPS for EGUs at 40 CFR 60.42Da(b)(1) and the Acid Rain Program requirements at 40 CFR 75.14(e), which generally provide that any owner or operator that elects to install, calibrate, maintain, and operate a PM CEMS for demonstrating compliance with a sufficiently stringent PM emission limitation (*i.e.,* 0.030 lb/MMBtu or lower) need not meet the opacity limit and monitoring requirements.[26] The PM

[26] *See* NSPS for EGUs at 40 CFR 60.42Da and the Acid Rain Program requirements at 40 CFR part 70. Subpart Da to part 60 is the ''Standard of Performance for Electric Utility Steam Generating Units'' and applies to units that are capable of combusting more than 73 MW heat input of fossil fuel and for which construction, modification, or reconstruction commenced after September 18,

Continued

CEMS is a monitoring system that provides a continuous assessment of compliance with a PM emission limitation. Generally, opacity limits and COMS have been used as a surrogate to ensure compliance with a PM emission standard that would otherwise be subject only to periodic source testing.[27] NGS is not subject to the NSPS for EGUs at 40 CFR 60.42Da. However, we are proposing to follow the same rationale from Subpart Da to remove the opacity limit and COMS requirement because we are concurrently proposing to revise the NGS FIP to require the installation, calibration, operation, and maintenance of PM CEMS to demonstrate compliance with the lower proposed PM emission limitation of 0.030 lb/MMBtu. As explained in the preamble to our 2010 FIP, water droplets, which are present in the NGS stacks because of the $SO_2$ scrubbers, can cause inaccurate excess emission readings on the COMS.[28] Because the PM CEMS provides a better continuous demonstration of compliance with the revised and more stringent PM emission limitation than an opacity limit and COMS, this proposed revision would not relax any existing requirements in the NGS FIP with respect to PM emissions and would not adversely affect air quality in the surrounding area.

4. Revisions to 40 CFR 49.5513(e)

In 40 CFR 49.5513(e)(1) and (e)(4), we are proposing changes to remove testing and monitoring requirements for opacity, consistent with our proposed removal of the opacity limit in 40 CFR 49.5513(d)(4). Because we are proposing to remove the opacity limit, the requirements in 40 CFR 49.5513(e)(1) to operate COMS and in (e)(4) to maintain two sets of opacity filters for the COMS are no longer necessary. In paragraph (e)(2), we are proposing to replace the existing specifications related to annual PM testing with a requirement to install, calibrate, maintain, and operate PM CEMS to demonstrate compliance with the 0.030 lb/MMBtu emission limit in accordance with the specifications in the MATS Rule by the effective date of the final FIP. The use of PM CEMS is a continuous measurement and is a better method for ensuring compliance with the revised and more stringent PM emission limit than annual source testing for the existing less stringent PM emission limit combined with an opacity limit and COMS. Therefore, these combined revisions would not relax existing requirements with respect to PM emissions or result in adverse effects on air quality in the surrounding area.

Under 40 CFR 49.5513(e)(8), we are proposing to correct an outdated reference to ''Section 49.24(d)(3),'' which has been recodified as 40 CFR 49.5513(d)(3).[29]

5. Revisions to 40 CFR 49.5513(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to specify that all reports and notifications required in 40 CFR 49.5513 should be sent to the NNEPA and the Regional Administrator of the Region IX office of the EPA. Because 40 CFR 49.5513(f)(2) repeats addresses and other reporting details already provided in paragraph (f), we are also proposing to delete the redundant provisions in paragraph (f)(2). These proposed administrative changes would not relax any requirements or have any effect on air quality in the area surrounding NGS.

In addition, consistent with the proposed removal of the COMS requirement in paragraph (e), we are also proposing to remove the reporting requirements related to the COMS in paragraph (f)(4). The use of PM CEMS is a continuous measurement and is a better method for ensuring compliance with the revised and more stringent PM emission limit than annual source testing for the existing less stringent PM emission limit combined with an opacity limit and COMS. Therefore, these combined revisions would not relax existing requirements with respect to PM emissions or result in adverse effects on air quality in the surrounding area.

6. Revisions to 40 CFR 49.5513(j)

In 40 CFR 49.5513(j)(8), we are proposing to remove addresses for the NNEPA and the EPA that are already provided in 40 CFR 49.5513(f) and to require that all reports and notifications under paragraph (j) be submitted to the NNEPA and the EPA in accordance with 40 CFR 49.5513(f). This proposed revision removes redundant information and requires reporting for 40 CFR 49.55153(j) to be consistent with the reporting requirements in 40 CFR 49.5513(f). Therefore, these proposed revisions would not adversely affect air quality in the surrounding area. These proposed changes to 40 CFR 49.5513(j)(10) do not relax any requirements or have any effect on air quality in the area surrounding NGS.

## IV. Solicitation of Comments

As described above, the EPA is proposing the following revisions: (1) Move the 1991 FIP provisions from 40 CFR 52.145(d) to 40 CFR 49.5513; (2) revise a definition of boiler operating day; (3) clarify the compliance dates applicable to the FIP requirements; (4) lower the PM emission limitation in the 2010 FIP from 0.060 lb/MMBtu to 0.030 lb/MMBtu; (5) revise the PM compliance demonstration from annual source testing to the use of PM CEMS; (6) and replace the existing opacity limit and COMS requirement with a new requirement to demonstrate compliance with the PM emission limitation of 0.030 lb/MMBtu using PM CEMS.

The EPA solicits comments on the limited provisions of the NGS FIP that we are proposing to revise in this rulemaking. We are not accepting comment on any provisions of the NGS FIP that we are not proposing to revise. Accordingly, please limit your comments to those specific provisions listed above that we are proposing to revise in today's action.

## V. Environmental Justice Considerations

The Navajo Generating Station is located on the reservation lands of the Navajo Nation, and the EPA recognizes there is significant community interest in the emissions and environmental effects of this facility. As discussed elsewhere in this document, the proposed revisions to the NGS FIP would strengthen the FIP by requiring the use of PM CEMS to demonstrate compliance with the lower PM emission limitation of 0.030 lb/MMBtu. Because the proposed revisions strengthen the NGS FIP, the EPA considers this action to be beneficial for human health and the environment, and to have no potential disproportionately high and adverse effects on minority, low-income, or indigenous populations.

1978. The units at NGS were constructed prior to 1978 and are not subject to part 60 subpart Da.

[27] *See, e.g.,* discussion of opacity in the 2007 FIP for the Four Corners Power Plant, 72 FR 25698 at 25701 (May 7, 2007), stating that opacity limits are generally applied to ensure a unit is meeting its PM limit.

[28] *See* 75 FR 10175. We also explained that, ''NGS will continue to have a requirement to operate COMs on each stack since the COMs do operate properly during start-up and at other times when the $SO_2$ scrubbers are bypassed for maintenance purposes . . . Therefore, in the final rule excess opacity due to uncombined water droplets in the stack does not constitute an exceedance, but it will be reported on the quarterly excess emissions reports.'' 75 FR 10177. *See also,* 40 CFR 49.5113(f)(4).

[29] 76 FR 23876 (April 29, 2011).

## VI. 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. This rule applies to only one facility and is therefore not a rule of general applicability.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule applies to only one facility. Therefore, its recordkeeping and reporting provisions do not constitute a ''collection of information'' as defined under 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

*D. Regulatory Flexibility Act (RFA)*

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. Firms primarily engaged in the generation, transmission, and/or distribution of electric energy for sale are small if, including affiliates, the total electric output for the preceding fiscal year did not exceed four million megawatt-hours. Each of the owners of the facility affected by this rule, Salt River Project, the Bureau of Reclamation, Arizona Public Service, Tucson Electric Power, and NV Energy, exceed this threshold.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

*F. 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.

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

This action does not have tribal implications, as specified in Executive Order 13175. Although this proposed action affects a facility located in Indian country, the proposed limited revisions to existing provisions in the NGS FIP will not have substantial direct effects on any 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. Thus, Executive Order 13175 does not apply to this action. However, we note that we have engaged in numerous discussions with the NNEPA during the development of this proposed rule and continue to invite consultation on this proposed action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern 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.

*I. 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.

*J. National Technology Transfer and Advancement Act*

This action involves technical standards. The technical standards in this action are based on the technical standards used in other rulemakings promulgated by the EPA. We refer to the discussion of the technical standards and voluntary consensus standards in the final rule for 40 CFR part 60 subpart Da and 40 CFR part 63 subpart UUUUU at 77 FR 9304 at 9441 (February 16, 2012).

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. If this rule is finalized as proposed, we expect that the limited revisions to the FIP will strengthen requirements for PM compliance demonstrations with a lower PM emission limitation of 0.030 lb/MMBtu, and will not relax any other existing requirements.

**List of Subjects**

*40 CFR Part 49*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Visibility.

Dated: October 26, 2018.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

### Subpart L—Implementation Plans for Tribes—Region IX

■ 2. Section 49.5513 is amended by:
■ a. Revising paragraph (b);
■ b. Revising paragraphs (d)(2) and (3);
■ c. Removing paragraph (d)(4);
■ d. Revising paragraphs (e)(1) and (2);
■ e. Removing and reserving paragraph (e)(4);
■ f. Revising paragraph (8);
■ g. Revising paragraphs (f) introductory text and (f)(2) and (4);
■ h. Revising paragraphs (j)(8) introductory text; and
■ i. Adding paragraph (k).

The revisions and additions read as follows:

**§ 49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.**

* * * * *

(b) *Compliance dates.* Compliance with the requirements of this section is required no later than April 5, 2010, unless otherwise indicated by compliance dates contained in specific provisions.

* * * * *

(d) * * *

(2) *Particulate matter.* By [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], no owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.030 lb/MMBtu, on a plant-wide basis.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities, as documented in the dust suppression plan submitted on February 2, 2015, or any subsequent revision thereto. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station, as determined using 40 CFR part 60, Appendix A–4 Method 9.

(e) *Testing and monitoring.* (1) On and after the effective date of this regulation, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for $NO_X$ and $SO_2$ on Units 1, 2, and 3 in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75.

(2) By [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall install, calibrate, maintain, and operate particulate matter CEMS on Units 1, 2, and 3 to assure continuous compliance with the particulate matter limits in paragraph (d)(2) of this section, in accordance with 40 CFR part 63 subpart UUUUU.

* * * * *

(8) A certified EPA Reference Method 9 of Appendix A–4 of 40 CFR part 60 observer shall conduct a weekly visible emission observation for the equipment and activities described under paragraph (d)(3) of this section. If visible emissions are present at any of the equipment and/or activities, a 6-minute EPA Reference Method 9 observation shall be conducted. The name of the observer, date, and time of observation, results of the observations, and any corrective actions taken shall be noted in a log.

(f) *Reporting and recordkeeping requirements.* All requests, reports, submittals, notifications and other communications to the EPA, Regional Administrator, or Administrator required by this section and references therein shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871–7692, (928) 871–7996 (facsimile); and to the Regional Administrator, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: ORA–1, at 75 Hawthorne Street, San Francisco, California 94105, (415) 947–8000. For each unit subject to the emissions limitations in this section the owner or operator shall:

* * * * *

(2) For excess emissions, notify the Regional Administrator by telephone or in writing within one business day. A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

* * * * *

(4) Submit quarterly excess emissions reports for sulfur dioxide and PM as recorded by CEMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Cylinder Gas Audit.

* * * * *

(j) * * *

(8) *Reporting.* All reports and notifications under this paragraph (j) must be submitted as required by paragraph (f) of this section to the Director, Navajo Nation Environmental Protection Agency and to the Regional Administrator.

* * * * *

(k) This paragraph (k) is applicable to the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3 at the Navajo Generating Station in the Northern Arizona Intrastate Air Quality Control Region 40 CFR 81.270).

(1) *Definitions—(i) Administrator* means the Administrator of EPA or his/her designee.

*(ii) Affected unit(s)* means the steam-generating unit(s) at the Navajo Generating Station, all of which are subject to the emission limitation in paragraph (k)(2) of this section, that has accumulated at least 365 boiler operating days since the passage of the date defined in paragraph (k)(6) of this section applicable to it.

*(iii) Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

*(iv) Owner or operator* means the owner, participant in, or operator of the Navajo Generating Station to which this paragraph (k) is applicable.

*(v) Unit-week of maintenance* means a period of 7 days during which a fossil fuel-fired steam-generating unit is under repair, and no coal is combusted in the unit.

(2) *Emission limitation.* The following emission limitation shall apply at all times. No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere in excess of 42 nanograms per Joule (ng/J) [0.10 pound per million British thermal units (lb/MMBtu)] heat input.

(3) *Compliance determination.* Until at least one unit qualifies as an affected unit, no compliance determination is appropriate. As each unit qualifies for treatment as an affected unit, it shall be included in the compliance determination. Compliance with this emission limit shall be determined daily on a plant-wide rolling annual basis as follows:

(i) For each boiler operating day at each steam generating unit subject to the emission limitation in paragraph (k)(2) of this section, the owner or operator shall record the unit's hourly $SO_2$ emissions using the data from the continuous emission monitoring systems, required in paragraph (k)(4) of this section, and the daily electric energy generated by the unit (in megawatt-hours) as measured by the megawatt-hour meter for the unit.

(ii) Compute the average daily $SO_2$ emission rate in ng/J (lb/MMBtu) following the procedures set out in method 19, appendix A, 40 CFR part 60 in effect on October 3, 1991.

(iii) For each boiler operating day for each affected unit, calculate the product of the daily $SO_2$ emission rate (computed according to paragraph (k)(3)(ii) of this section) and the daily electric energy generated (recorded according to paragraph (k)(3)(i) of this section) for each unit.

(iv) For each affected unit, identify the previous 365 boiler operating days to be used in the compliance determination. Except as provided in paragraphs (k)(9) and (k)(10) of this section, all of the immediately

preceding 365 boiler operating days will be used for compliance determinations.

(v) Sum, for all affected units, the products of the daily $SO_2$ emission rate-electric energy generated (as calculated according to paragraph (k)(3)(iii) of this section) for the boiler operating days identified in paragraph (k)(3)(iv) of this section.

(vi) Sum, for all affected units, the daily electric energy generated (recorded according to paragraph (k)(3)(i) of this section) for the boiler operating days identified in paragraph (k)(3)(iv) of this section.

(vii) Calculate the weighted plant-wide annual average $SO_2$ emission rate by dividing the sum of the products determined according to paragraph (k)(3)(v) of this section by the sum of the electric energy generated determined according to paragraph (k)(3)(vi) of this section.

(viii) The weighted plant-wide annual average $SO_2$ emission rate shall be used to determine compliance with the emission limitation in paragraph (k)(2) of this section.

(4) *Continuous emission monitoring.* The owner or operator shall install, maintain, and operate continuous emission monitoring systems to determine compliance with the emission limitation in paragraph (k)(2) of this section as calculated in paragraph (k)(3) of this section. This equipment shall meet the specifications in appendix B of 40 CFR part 60 in effect on October 3, 1991. The owner or operator shall comply with the quality assurance procedures for continuous emission monitoring systems found in appendix F of 40 CFR part 60 in effect on October 3, 1991.

(5) *Reporting requirements.* For each steam generating unit subject to the emission limitation in paragraph (k)(2) of this section, the owner or operator:

(i) Shall furnish the Administrator written notification of the $SO_2$, oxygen, and carbon dioxide emissions according to the procedures found in 40 CFR 60.7 in effect on October 3, 1991;

(ii) Shall furnish the Administrator written notification of the daily electric energy generated in megawatt-hours;

(iii) Shall maintain records according to the procedures in 40 CFR 60.7 in effect on October 3, 1991; and

(iv) Shall notify the Administrator by telephone or in writing within one business day of any outage of the control system needed for compliance with the emission limitation in paragraph (k)(2) of this section and shall submit a follow-up written report within 30 days of the repairs stating how the repairs were accomplished and justifying the amount of time taken for the repairs.

(6) *Compliance dates.* The requirements of this paragraph shall be applicable to one unit at the Navajo Generating Station beginning November 19, 1997, to two units beginning November 19, 1998, and to all units beginning on August 19, 1999.

(7) *Schedule of compliance.* The owner or operator shall take the following actions by the dates specified, but the interim deadlines will be extended if the owner or operators can demonstrate to the Administrator that compliance with the deadlines in paragraph (k)(6) of this section will not be affected:

(i) By June 1, 1992, award binding contracts to an architectural and engineering firm to design and procure the control system needed for compliance with the emission limitation in paragraph (k)(2) of this section.

(ii) By January 1, 1995, initiate on-site construction or installation of a control system for the first unit.

(iii) By May 1, 1997, initiate start-up testing of the control system for the first unit.

(iv) By May 1, 1998, initiate start-up testing of the control system for the second unit.

(v) By February 1, 1999, initiate start-up testing of the control system for the third unit.

(8) *Reporting on compliance schedule.* Within 30 days after the specified date for each deadline in the schedule of compliance in paragraph (k)(7) of this section, the owner or operator shall notify the Administrator in writing whether the deadline was met. If it was not met, the notice shall include an explanation why it was not met and the steps which shall be taken to ensure future deadlines will be met.

(9) *Exclusion for equipment failure during initial operation.* (i) For each unit, in determining compliance for the first year that such unit is required to meet the emission limitation in paragraph (k)(2) of this section, periods during which one of the following conditions are met shall be excluded.

(A) Equipment or systems do not meet designer's or manufacturer's performance expectations.

(B) Field installation including engineering or construction precludes equipment or systems from performing as designed.

(ii) The periods to be excluded shall be determined by the Administrator based on the periodic reports of compliance with the emission limitation in paragraph (k)(2) of this section which shall identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the control system outage. The report also shall describe the actions taken to avoid the outage, to minimize its duration, and to reduce $SO_2$ emissions at the plant to the extent practicable while the control system was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any control system for any affected unit, the owner or operators shall submit a report within 15 days addressing the history of and prognosis for the performance of the control system.

(10) *Exclusion for catastrophic failure.* In addition to the exclusion of periods allowed in paragraph (d)(9) of this section, any periods of emissions from an affected unit for which the Administrator finds that the control equipment or system for such unit is out of service because of catastrophic failure of the control system which occurred for reasons beyond the control of the owner or operators and could not have been prevented by good engineering practices will be excluded from the compliance determination. Events which are the consequence of lack of appropriate maintenance or of intentional or negligent conduct or omissions of the owner or operators or the control system design, construction, or operating contractors do not constitute catastrophic failure.

(11) *Equipment operation.* The owner or operator shall optimally operate all equipment or systems needed to comply with the requirements of this paragraph consistent with good engineering practices to keep emissions at or below the emission limitation in paragraph (k)(2) of this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(12) *Maintenance scheduling.* On March 16 of each year starting in 1993, the owner or operator shall prepare and submit to the Administrator a long-term maintenance plan for the Navajo Generating Station that accommodates the maintenance requirements for the other generating facilities on the Navajo Generating Station grid covering the period from March 16 to March 15 of the next year and showing at least 6 unit-weeks of maintenance for the Navajo Generating Station during the November 1 to March 15 period, except as provided in paragraph (k)(13) of this section. This plan shall be developed consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure an adequate reserve margin of electric

generating capacity. At the time that a plan is transmitted to the Administrator, the owner or operator shall notify the Administrator in writing if less than the full scheduled unit-weeks of maintenance were conducted for the period covered by the previous plan and shall furnish a written report stating how that year qualified for one of the exceptions identified in paragraph (k)(13) of this section.

(13) *Exceptions for maintenance scheduling.* The owner or operator shall conduct a full 6 unit-weeks of maintenance in accordance with the plan required in paragraph (k)(12) of this section unless the owner or operator can demonstrate to the satisfaction of the Administrator that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required because one of the conditions in paragraph (k)(13)(i) through (iv) of this section are met. If the Administrator determines that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required, the owner or operator shall nevertheless conduct that amount of scheduled maintenance that is not precluded by the Administrator. Generally, the owner or operator shall make best efforts to conduct as much scheduled maintenance as practicable during the November 1 to March 15 period.

(i) There is no need for 6 unit-weeks of scheduled periodic maintenance in the year covered by the plan;

(ii) The reserve margin on any electrical system served by the Navajo Generating Station would fall to an inadequate level, as defined by the criteria referred to in paragraph (k)(12) of this section;

(iii) The cost of compliance with this requirement would be excessive. The cost of compliance would be excessive when the economic savings to the owner or operator of moving maintenance out of the November 1 to March 15 period exceeds $50,000 per unit-day of maintenance moved; and

(iv) A major forced outage at a unit occurs outside of the November 1 to March 15 period, and necessary periodic maintenance occurs during the period of forced outage.

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 52 continues to read as follows:

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

### Subpart D—Arizona

**§ 52.145 [Amended]**

■ 4. Section 52.145 amended by removing and reserving paragraph (d).

[FR Doc. 2018–24482 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0625; FRL–9986–36–Region 4]**

### Air Plan Approval; Kentucky; Attainment Plan for Jefferson County $SO_2$ Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision, submitted under a cover letter dated June 23, 2017, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on behalf of the Louisville Metro Air Pollution Control District (District or Jefferson County) to EPA, for attaining the 1-hour sulfur dioxide ($SO_2$) primary national ambient air quality standard (NAAQS) for the Jefferson County $SO_2$ nonattainment area (hereafter referred to as the ''Jefferson County nonattainment area,'' ''nonattainment Area'' or ''Area''). The Jefferson County nonattainment area is comprised of a portion of Jefferson County in Kentucky surrounding the Louisville Gas and Electric Mill Creek Electric Generating Station (hereafter referred to as ''Mill Creek'' or ''LG&E''). This plan (hereafter called a ''nonattainment plan'' or ''SIP'' or ''attainment SIP'') includes Kentucky's attainment demonstration and other elements required under the Clean Air Act (CAA or Act). In addition to an attainment demonstration, the plan addresses the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), base-year and projection-year emissions inventories, enforceable emission limits, nonattainment new source review (NNSR) and contingency measures. EPA proposes to conclude that Kentucky has appropriately demonstrated that the nonattainment plan provisions provide for attainment of the 2010 1-hour primary $SO_2$ NAAQS in the Jefferson County nonattainment area by the applicable attainment date and that the nonattainment plan meets the other applicable requirements under CAA.

**DATES:** Comments must be received on or before December 10, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0625 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

## I. Requirements for Kentucky to Submit an $SO_2$ Plan for the Jefferson County Area.

On June 22, 2010 (75 FR 35520), EPA promulgated a new 1-hour primary $SO_2$ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. *See* 40 CFR 50.17(a)–(b). On August 5, 2013 (78 FR 47191), EPA designated a first set of 29 areas of the country as nonattainment for the 2010 $SO_2$ NAAQS. *See* 40 CFR part 81, subpart C. These designations included the Jefferson County nonattainment area, which encompasses the primary $SO_2$ emitting source Mill Creek and the nearby Watson Lane $SO_2$ monitor (Air Quality Site (AQS) ID: 21–11–0051). These area designations were effective October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas designated as nonattainment for the $SO_2$ NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015, in this case. Under CAA section 192(a), these SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018.

For the Jefferson County nonattainment area (and many other areas), EPA published a notice on March 18, 2016 (81 FR 14736), that Kentucky (and other pertinent states) had failed to submit the required $SO_2$ nonattainment plan by the submittal deadline. This finding initiated a deadline under CAA section 179(a) for the potential imposition of NSR offset and highway funding sanctions. However, pursuant to Kentucky's submittal of June 23, 2017,[1] and EPA's subsequent letter dated October 10, 2017, to Kentucky finding the submittal to be complete and noting the termination of these sanctions deadlines, these sanctions under section 179(a) were not and will not be imposed as a result of Kentucky having missed the April 4, 2015, submittal deadline. Under CAA section 110(c), EPA's March 18, 2016, finding also triggered a requirement that EPA promulgate a federal implementation plan (FIP) within two years of the finding unless, by that time (a) the state has made the necessary complete submittal and (b) EPA has approved the submittal as meeting applicable requirements. EPA's FIP duty will be terminated if EPA issues a final approval of Kentucky's SIP revision.

[1] EPA received Kentucky's submittal on July 6, 2017.

## II. Requirements for $SO_2$ Nonattainment Area Plans

Nonattainment areas must provide SIPs meeting the applicable requirements of the CAA, and specifically CAA sections 110(a), 172, 191 and 192 for the $SO_2$ NAAQS. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued general guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed $SO_2$ SIPs and fundamental principles for SIP control strategies. *Id.,* at 13545–49, 13567–68. On April 23, 2014, EPA issued guidance for meeting the statutory requirements in $SO_2$ SIPs under the 2010 primary NAAQS, in a document entitled, ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf* (hereafter referred to as $SO_2$ nonattainment guidance). In this guidance, EPA described the statutory requirements for $SO_2$ SIPs for nonattainment areas, which include: An accurate emissions inventory of current emissions for all sources of $SO_2$ within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NNSR; enforceable emissions limitations and control measures; and adequate contingency measures for the affected area.

For EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192, and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it insures equivalent or greater emission reductions of such air pollutant. EPA is proposing to approve Kentucky's June 23, 2017, $SO_2$ attainment SIP for the Jefferson County nonattainment area because EPA has preliminarily determined that the plan satisfies the aforementioned CAA and regulatory requirements for nonattainment areas. Furthermore, EPA notes that current 2015–2017 quality-assured and certified data for the Watson Lane monitor (AQS ID: AQS ID: 21–11–0051) in the nonattainment area indicates a design value below the 1-hour $SO_2$ standard.

## III. Attainment Demonstration and Longer Term Averaging

CAA sections 172(c)(1) and (6) direct states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble, at 13567–68. $SO_2$ attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, Appendix W which demonstrates that these emission limits and control measures provide for timely attainment of the primary $SO_2$ NAAQS as expeditiously as practicable, but by no later than the CAA maximum attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully-enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable

(source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 $SO_2$ nonattainment guidance recommends that the emission limits be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to establish emission limits with longer averaging times of up to 30 days so long as the limits meet certain recommended criteria. *See* $SO_2$ nonattainment guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer term average limit should be a lower-adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value (CEV) shown by modeling to provide for attainment that the plan otherwise would have set.

EPA's $SO_2$ nonattainment guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 $SO_2$ NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact concerning the use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. *See* also *id.* at Appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary $SO_2$ NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 $SO_2$ NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single hourly exceedance of the 75-ppb level does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so the resulting frequency and magnitude of such exceedances, and in particular, whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the 3-year average of the annual fourth highest daily maximum 1-hour value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the $SO_2$ NAAQS form for determining attainment at monitoring sites, follows.

For $SO_2$ plans that are based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [2] shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of $SO_2$, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the ''critical emission value,'' which, if coincident with meteorological conditions conducive to high $SO_2$ concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario the source is presumed to occasionally emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source that always emits 1000 pounds of $SO_2$ per hour, which results in air quality at the level of the NAAQS (*i.e.,* results in a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the 5-highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour

[2] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 Appendix T provides for averaging three years of 99th percentile daily maximum hourly values (*e.g.,* the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' to simplify the illustration of relevant principles.

(lb/hr). It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 lb/hr, but with a typical emissions profile, emissions would much more commonly be between 600 and 800 lb/hr. In this simplified example, assume a zero-background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 lb/hr, 1100 lb/hr, 500 lb/hr, 900 lb/hr, and 1200 lb/hr, respectively. (This is a conservative example because the average of these emissions, 900 lb/hr, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third day would not have an exceedance that otherwise would have occurred, and the fourth day would have a concentration below, rather than at, 75 ppb. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in Appendix B of EPA's $SO_2$ nonattainment guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in Appendix B of its nonattainment guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach—which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value—meets the requirements in sections 110(a)(1) and 172(c)(1) and (6) for SIPs to contain enforceable emissions limitations and other control measures to ''provide for attainment'' of the NAAQS. For $SO_2$, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA's nonattainment guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 $SO_2$ NAAQS.

The $SO_2$ nonattainment guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a degree of stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.[3] The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in Appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, Appendix W*),* also referred to as *Guideline.* In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating $SO_2$ concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the $SO_2$ NAAQS is provided in Appendix A to the $SO_2$ nonattainment guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary $SO_2$ NAAQS must demonstrate future attainment and maintenance of

[3] For example, if the critical emission value is 1000 pounds of $SO_2$ per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 lb/hr.

the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* Appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the $SO_2$ NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling of stationary sources as applied consistent with EPA's *Guideline* is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it appropriately takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of $SO_2$. The SIP modeling should follow requirements in the Guideline for conducting a cumulative impact assessment and, thus, should use EPA's preferred dispersion model, the AERMOD modeling system (or approved alternative model) and follow Section 8 of the Guideline in terms of characterizing contributions to total concentrations.

## IV. Review of Attainment Plan Requirements

### *A. Emissions Inventory*

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to: (1) Estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; and (2) Assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. As noted above, the state must develop and submit to EPA a comprehensive, accurate and current inventory of actual emissions from all sources of $SO_2$ emissions in each nonattainment area, as well as any sources located outside the nonattainment area which may affect attainment in the area. *See* CAA section 172(c)(3) and (4) and EPA's $SO_2$ nonattainment guidance.

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to assess reasonable further progress requirements. Kentucky used 2011 as the base year for emission inventory preparation. At the time of preparation of the attainment SIP, 2011 reflected the most recent triennial National Emission Inventory (NEI v2),[4] Version 2 supported the requirement for timeliness of data, and was also representative of a year with violations of the primary $SO_2$ NAAQS (*i.e.,* one of the 3-years for which EPA designated the area nonattainment).

For the base-year inventory, Kentucky reviewed and compiled county-level actual $SO_2$ emissions for all source categories (*i.e.,* point, mobile (on-road and non-road), area (non-point) and event (wildfires and prescribed burns)) in Jefferson County and then utilized county and partial county (the portion in the nonattainment area) population and land use data to determine estimated $SO_2$ emission inventories for sources of $SO_2$ in the partial county nonattainment area. The emissions inventory provided in the June 23, 2017, submission reflects the most current emissions profile for all source categories. Additionally, EPA has provided supplemental emissions information to accurately account for point source emissions for the County. In Jefferson County, point sources account for approximately 99 percent of the total county-level $SO_2$ emissions. Kentucky provided an $SO_2$ emission inventory for those point sources in the County that emitted over 10 tons per year (tpy) based on the 2011 NEI. Table 1 below shows county-level $SO_2$ emissions that emitted greater than 10 tpy in 2011.

TABLE 1—JEFFERSON COUNTY 2011 BASE YEAR POINT SOURCE $SO_2$ EMISSION INVENTORY

(tpy)

| Plant/facility site name | $SO_2$ Emissions (tpy) |
|---|---|
| Louisville Gas & Electric—Mill Creek | 29,944.72 |
| Louisville Gas & Electric—Cane Run | 7,823.72 |
| Louisville Medical Center Steam Plant | 475.90 |
| Brown-Forman/Early Times | 257.81 |
| Cemex (Kosmos) Cement Company Inc | 187.47 |
| American Synthetic Rubber Company | 136.87 |
| Louisville International Airport | 136.19 |
| Rohm and Haas Company | 28.44 |
| Total emissions for sources greater than 10 tpy | [5] 38,991.12 |
| Other $SO_2$ sources | 19.24 |
| Total | 39,010.37 |

The primary $SO_2$-emitting point source located within the partial county nonattainment area is LG&E's Mill Creek Generating Station (Mill Creek). Mill Creek consists of four coal-fired boilers (U1–U4). A breakdown of the actual 2011 emissions by unit in tpy are as follows: Unit 1—5,211 tpy; Unit 2—6,802 tpy; Unit 3—7,175 tpy and Unit 4—10,756 tpy. LG&E replaced the existing wet Flue Gas Desulfurization (FGD) control equipment with more efficient FGD controls, to comply with the mercury air toxics standard (MATS). These replacements have been operational for all four units as of June 8, 2016. Mill Creek is the only $SO_2$ point source located in the partial nonattainment area that is listed in Table 1. Refer to sections IV.B.4 and IV.C for more information on Mill Creek and the 1-hour $SO_2$ control strategy.

Prior to 2016, LG&E Cane Run Generating Station (Cane Run) was the next largest $SO_2$ source located in the northern portion of the County and outside the nonattainment area. The facility had three boilers and reported $SO_2$ emissions of 7,823 tons in 2011. In 2015, LG&E constructed a new natural gas combined cycle turbine (U15) at the

[4] 2011 NEI Data—*https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-data* (accessed January 31, 2017).

[5] The 39,010.37 total $SO_2$ point source emissions in Table 1 above is the supplemented comprehensive county-level base year $SO_2$ point source emission inventory. EPA notes that the Table 1 total county-level 2011 $SO_2$ point source emissions of 39,010.37 tons differs from the 38,854.87 tons sum of point source $SO_2$ emissions listed in Table 3 of Kentucky's 2017 attainment SIP. Table 1 above accounts for EPA's review of the 2011 NEI v2 for all $SO_2$ point sources in Jefferson County. The Commonwealth's Table 3 lists all point sources in the county that emitted over 10 tpy of $SO_2$ which the Commonwealth acquired from EPA's 2011 NEI v2 on January 31, 2017. However, the Commonwealth's Table 3 inadvertently omits the Louisville International Airport point source listed in Table 1 above. Additionally, EPA notes Table 1 above compiles all county-level $SO_2$ emissions from point sources according to the 2011 NEI v2 including those point sources that emitted less than 10 tpy while Kentucky's Table 3 accounts for those point sources that emitted greater than 10 tpy as indicated in the 2011 NEI v2. Lastly, EPA also notes the point source emissions entry in Kentucky's attainment SIP Table 2 is different from the sum of point source emissions in Kentucky's Table 3 and EPA's Table 1 total above. Therefore, the 39,010.37 tons of $SO_2$ for point sources total in Table 1 above accounts for the comprehensive compilation of county-level point sources as indicated in the 2011 NEI v2.

Cane Run facility and shut-down coal-fired units U4 thru U8 and U10.[6]

The CEMEX Kosmos Louisville Cement Plant (Kosmos) is outside the boundary of, but adjacent to, the Jefferson County nonattainment area. The facility produces Portland and masonry cement and has a production design capacity of 1.6 million short tons of cement per year. The primary source of the $SO_2$ emissions are from kiln operations, which emitted 187 tons in 2011.

Mill Creek is the only point source in the nonattainment area and the primary source of the violation at the Watson Lane monitor at the time of designations for the nonattainment area listed in Table 1. Therefore, Mill Creek was the only $SO_2$ source the Commonwealth and the District considered for further evaluation determined to impact the nonattainment area. Cane Run, Kosmos and the remaining county-level point sources in Table 1 are all located outside of the nonattainment area and were accounted for in the attainment modeling through the background monitor (see section IV.B.4 below).

KDAQ used the 2011 NEIv2 to obtain estimates of the area and nonroad sources. For on-road mobile source emissions, KDAQ utilized EPA's Motor Vehicle Emissions Simulator (MOVES2014) and NONROAD. A more detailed discussion of the emissions inventory development for the Jefferson County Area can be found in the June 23, 2017, submittal. Table 2 below provides Kentucky's 2011 base year county-level $SO_2$ emission inventory for Jefferson County.

TABLE 2—2011 BASE YEAR EMISSIONS INVENTORY FOR JEFFERSON COUNTY

(tpy)

| Year | Point | On-road | Nonroad | Area | Event | Total |
|---|---|---|---|---|---|---|
| 2011 | [7] 39,010.37 | 64.20 | 158.75 | 38.28 | 2.61 | 39,274.21 |

Based on an evaluation of county and partial county (nonattainment area) census and land use data, Kentucky determined that the nonattainment area accounted for 0.42 percent of the total county land use [8] or a total of 1.1 tpy when applied to the county-level source categories in Table 2, excluding the point source category (see Table 1 above). As noted above, Mill Creek is the only point source in the nonattainment area. Table 3 below shows the level of $SO_2$ emissions, expressed in tpy, in the partial Jefferson County nonattainment area for the 2011 base year by emissions source category.

TABLE 3—2011 BASE YEAR EMISSION INVENTORY FOR THE JEFFERSON COUNTY PARTIAL NONATTAINMENT AREA EMISSIONS

(tpy) [9]

| Base year | Point | On-road | Nonroad | Area | Event | Total |
|---|---|---|---|---|---|---|
| 2011 | [10] 29,944.72 | 0.27 | 0.67 | 0.16 | 0.01 | 29,945.83 |

The attainment demonstration also provides for a projected 2018 attainment year inventory that includes estimated emissions for all emission sources of $SO_2$ which are determined to impact the nonattainment area for the year in which the Area is expected to attain the standard. This inventory should also address any future growth in the Area or any potential increases in emissions of the pollutant for which the Jefferson County Area is nonattainment due to the construction and operation of new major sources, major modifications to existing sources, or increased minor source activity. KDAQ stated in its June 23, 2017, submittal that because the Area is rural and relatively small, it is unlikely that there will be any significant growth in the nonattainment area. However, the Commonwealth cites to the District's Regulation 2.04, *Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas,* which requires NNSR, approved into the SIP and last updated on October 23, 2001 (see 66 FR 53660). The District's SIP-approved NNSR program requires lowest achievable emissions rate, offsets, and public participation requirements for major stationary sources and major modification and therefore, would account for potential growth in the nonattainment area. Kentucky reviewed and compiled county-level actual $SO_2$ emissions for all source categories (*i.e.,* point, mobile (on-road and non-road), area (non-point) and event) in Jefferson County and then utilized county and partial county nonattainment area population and land use data to determine estimated $SO_2$ emission inventories for sources of $SO_2$ in the nonattainment area. The Commonwealth developed a projected emissions inventory for county-level $SO_2$ emissions source categories based on the 2011 NEI as well as the 2008 NEI inventory to extrapolate emissions to 2018. The point source emissions were estimated by taking credit at Mill Creek for the new wet FGD controls and title V operating permit limits of 0.20 lb/

[6] KDAQ submitted information regarding the shut-down of the coal-fired units U4 thru U8 and U10 and the new natural gas combined cycle (U15) and auxiliary unit (U16) to EPA on June 20, 2016, to satisfy part of its obligations under the $SO_2$ Data Requirements Rule at 40 CFR 51.1203(b). The Title V operating permit 175–00–TV(R2) established a natural gas fuel restriction for EGUs U15 and U16 is included in the docket for this proposal (ID: EPA–R04–OAR–2017–0625).

[7] EPA notes that the total county-level 2011 $SO_2$ point source emissions of 39,010.37 tons differ from the 38,966.95 tons sum of point source $SO_2$ emissions listed in Table 2 of Kentucky's 2017 attainment SIP. Table 2 above accounts for EPA's review of the 2011 NEI v2 for all $SO_2$ point sources in Jefferson County.

[8] Based on the 2010 census data, the population in Jefferson County was 741,096 in a land area of approximately 380.42 square miles. At the census tract level for the county including the nonattainment area, roughly 8.25 square miles, the population was estimated to 7,170 or approximately 1 percent of the total county population. The nonattainment area occupies only 1.61 square miles of the census tracts or approximately 0.42 percent of the total land area.

[9] Table 2 of Kentucky's 2017 attainment SIP lists the county-level emissions. EPA applied the 0.42 percent to the county-level on-road, nonroad and area source categories in Table 2 to derive the emissions for the nonattainment area.

[10] Mill Creek.

MMBtu per unit based on a rolling 30-day average.[11] Point sources in the County are still expected to account for approximately 99 percent of the total county-level $SO_2$ emissions.[12] Emission estimates for on-road sources were re-estimated with MOVES2014; nonroad emissions were projected using national growth factors, and area source emissions were scaled based on emission factors developed using the Annual Energy Outlook 2014 for consumption and production forecasts. Table 4 below provides Kentucky's 2018 projected county-level $SO_2$ emission inventory for Jefferson County.

TABLE 4—2018 PROJECTED ATTAINMENT YEAR $SO_2$ EMISSIONS INVENTORY FOR JEFFERSON COUNTY

| Year | Point | On-road | Nonroad | Area | Event | Total |
|---|---|---|---|---|---|---|
| 2018 | 18,391.77 | 38.04 | 158.75 | 55.62 | 5.99 | 18,650.17 |

Based on county and partial county nonattainment area census and land use data, similar to the base-year nonattainment area inventory, Kentucky applied the 0.42 percent nonattainment area land use ratio to the 2018 county-level projected emissions inventory in Table 4 resulting in total of 1.06 tpy for on-road, non-road and area sources, excluding point source category.[13] Table 5 below shows the level of emissions, expressed in tpy, in the Jefferson County nonattainment area for the 2018 projected attainment year inventory.

KDAQ provided a future year projected emissions inventory for all known sources included in the 2011 base year inventory, discussed above. The projected emissions are consistent with expected levels beyond October 4, 2018, when the control strategy for the attainment demonstration will be fully implemented. Therefore, as an annual future year inventory, the point source portion is reasonably estimated beyond October 4, 2018, and would represent an annual inventory for 2019 or beyond. The projected emissions in Table 2 are estimated actual emissions, representing a 55 percent reduction from the base year $SO_2$ emissions.

TABLE 5—2018 PROJECTED ATTAINMENT YEAR EMISSIONS INVENTORY FOR JEFFERSON COUNTY PARTIAL NONATTAINMENT AREA

(tpy) [14]

| Year | Point | On-road | Nonroad | Area | Event | Total |
|---|---|---|---|---|---|---|
| 2018 | 13,490 | 0.16 | 0.67 | 0.23 | 0.03 | 13,491.09 |

EPA has evaluated Kentucky's 2011 base year and projected emissions inventory for the Jefferson County nonattainment area and has made the preliminary determination that these inventories were developed consistent with EPA's April 2014 $SO_2$ nonattainment guidance. Although EPA has noted minor discrepancies between Kentucky's inventory provided in the nonattainment SIP and the 2011 NEI, EPA is proposing to find that Kentucky's inventory is sufficiently comprehensive and accurate to serve the planning purposes for which the inventory is required. Therefore, EPA is proposing to determine the Jefferson County $SO_2$ attainment SIP meets the requirements of CAA section 172(c)(3) and (4) for the Jefferson County nonattainment area.

*B. Attainment Modeling Demonstration*

The following discussion is an evaluation of various features of the modeling that Kentucky used in its attainment demonstration.

1. Model Selection

Kentucky's attainment demonstration used AERMOD, the EPA's preferred model for this application. The Commonwealth used AERMOD version 15181 with regulatory default options and a rural land use designation. Version 15181 of the AERMOD modeling system was the current regulatory version at the time Kentucky was preparing the attainment demonstration. Appendix 3 in Kentucky's June 23, 2017, submittal, provides a summary of the modeling procedures and options, including details explaining how they applied the Auer technique to determine that the rural dispersion coefficients were appropriate for the modeling. Model receptors were located throughout the nonattainment area using a grid with 100 meters spacing between receptors. Receptor elevations and hill heights required by AERMOD were determined using the AERMAP terrain preprocessor version 11103. The meteorological data was processed using AERMET version 15181 and AERMINUTE version 15272. The surface characteristics around the meteorological surface station were determined using AERSURFACE version 13016. An analysis of Good Engineering Practice (GEP) stack heights and building downwash was performed using BPIPPRIME version 04274. The results of the downwash analysis show that the actual stack heights at the Mill Creek facility exceed the GEP heights, so the GEP stack heights for each stack were used in the modeling. EPA proposes to find the model selection and procedures used to run the model appropriate.

2. Meteorological Data

The Commonwealth incorporated the most recently available five years of

[11] Title V operating permit 145–97–TV(R3) issued by Jefferson County is in the Docket (ID: EPA–R04–OAR–2017–0625) for this proposal action.

[12] Kentucky developed an adjusted 2018 projected attainment year inventory to account for $SO_2$ emission reductions from additional point sources in the County including LG&E Mill Creek and Cane Run. The attainment SIP submission indicates the $SO_2$ emissions reductions from sources outside of the nonattainment area are not required to demonstrate attainment but acknowledges decreases in other source $SO_2$ point source emissions with the replacement from coal-fired units to other fuel at LG&E Cane Run, University of Louisville (99 percent decrease), and Duke Energy's Gallagher Electric Generating Station (92 percent decrease) in Floyd County, Indiana.

[13] Mill Creek is the only point source in the nonattainment Area.

[14] Table 5 of Kentucky's 2017 attainment SIP lists the county-level projected emissions. EPA applied the 0.42 percent to the county-level on-road, nonroad and area source categories in Table 5 to derive the emissions for the partial county nonattainment area.

meteorology data from 2011–2015, as measured at a spatially representative National Weather Service airport site. The 1-minute surface-level data came from the Louisville Standiford Field station in Louisville, Kentucky located about 20 kilometers (km) to the northeast of the facility. Twice daily upper-air meteorological information came from the Wilmington Air Park, Wilmington, Ohio station located about 240 km to the northeast. The surface characteristics of the meteorological surface station were processed using AERSURFACE version 13016 following EPA-recommended procedures and were determined to be representative of the facility by the Commonwealth. EPA proposes to find that the meteorological data selection and processing are appropriate.

3. Emissions Data

As previously stated, Mill Creek is the only $SO_2$ emitting major point source in the nonattainment area and the only emission source explicitly modeled in the attainment modeling analysis for the Jefferson County nonattainment area. All minor area sources and other major point sources (located outside the nonattainment area boundary) were accounted for with the background concentration discussed in Section IV.B.5. Mill Creek operates four coal-fired boiler units (U1 thru U4) that emit from three stacks. Unit 1 and Unit 2 have a joint stack (S33) while Unit 3 and Unit 4 have separate stacks (S4 and S34, respectively). Mill Creek replaced its wet FGD Units on all stacks to improve $SO_2$ reduction efficiencies. All FGD construction was completed and operational by June 8, 2016.

The Commonwealth evaluated the emissions from Mill Creek and derived a set of three $SO_2$ critical emission values (CEVs), one for each stack, from AERMOD modeling simulations to show compliance with the 2010 $SO_2$ NAAQS. The AERMOD modeling analysis resulted in the following CEV's: Stack S33, which serves Units 1 and 2, was modeled at 225.4 grams/second (g/s) equivalent to 1,789 lb/hr; stack S4, which serves Unit 3, was modeled at 152.6 g/s equivalent to 1,211 lb/hr; and stack S34, which serves Unit 4, was modeled at 183.6 g/s equivalent to 1,457 lb/hr. In each case, the modeled emission rate corresponds to 0.29 pounds per million British thermal units (lb/MMBtu) times the maximum heat input capacity (MMBtu/hr) of the unit(s) associated with each stack. This form of an emission limit, in lb/MMBtu, is a frequent form of emission limit associated with electric generating units. The Commonwealth determined from these AERMOD modeling simulations that an hourly emission limit of 0.29 lb/MMBtu would suffice to ensure modeled attainment of the $SO_2$ NAAQS. However, the Commonwealth opted to apply a 30-day average limit, following EPA's $SO_2$ nonattainment guidance for setting longer term average limits. The Commonwealth determined that a 30-day average limit of 0.20 lb/MMBtu could be considered comparably stringent to a 1-hour limit of 0.29 lb/MMBtu. Section IV.B.4.ii below, entitled ''Longer Term Average Limits,'' provides more discussion on how the Commonwealth made this determination.

4. Emission Limits

An important prerequisite for approval of an attainment plan is that the emission limits that provide for attainment be quantifiable, fully-enforceable, replicable, and accountable. *See* General Preamble at 13567–68. Therefore, part of the review of Kentucky's attainment plan must address the use of these limits, both with respect to the general suitability of using such limits for this purpose and with respect to whether the limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the plan, and the second subsection that follows addresses the 30-day average limits.

i. Enforceability

Section 172(c)(6) provides that emission limits and other control measures in the attainment SIP shall be enforceable. Kentucky's attainment SIP for the Jefferson County nonattainment area relies on control measures and enforceable emission limits for the four coal-fired boilers at Mill Creek. These emission reduction measures were accounted for in the attainment modeling for Mill Creek, which demonstrates attainment for the 2010 $SO_2$ NAAQS. Kentucky's control strategy for the Jefferson County nonattainment area consists of replacing FGD control equipment with more efficient FGD controls at Mill Creek, addressing $SO_2$ emissions for all four units (U1, U2, U3 and U4): Unit 4 new FGD went into service on December 9, 2014; Units 1 and 2 new combined FGD went into service on May 27, 2015; and Unit 3 new FGD went into service on June 8, 2016.

LG&E installed wet FGD replacements at Mill Creek to comply with the MATS Rule.[15] Jefferson County issued a construction permit (No. 34595–12–C) on June 15, 2012, to LG&E authorizing the construction for wet FGD control equipment replacements for the four coal-fired boilers at the Mill Creek facility. This construction permit also included a 0.20 lb/MMBtu limit for $SO_2$ as a surrogate for the hydrochloric acid gas requirements for MATS. This emission limit was incorporated into the title V permit on July 31, 2014, (145–97–TV (R2)). LG&E was required to comply with the MATS Rule by April 2016.[16] Effective June 8, 2016, the Mill Creek facility completed installation of improved wet FGD $SO_2$ controls on all three stacks, which has reduced $SO_2$ emissions by approximately 89 percent since 2014 emission levels.[17]

As discussed further in the RACT/RACM section 1V.C below, Kentucky determined that the wet FGD replacements at Mill Creek provide for $SO_2$ emission reductions that model attainment for the Jefferson County nonattainment area. With respect to the 1-hour $SO_2$ standard, Kentucky established an independent emission limit of 0.20 lb/MMBtu, for each coal-fired unit at Mill Creek on a 30-day average basis in accordance with EPA's $SO_2$ nonattainment guidance for longer term averaging time for the purpose of demonstrating attainment for the 1-hour $SO_2$ standard (see section IV.B.4. ii). These emission limits apply independently to each of the four coal-fired units (U1 thru U4), which emit $SO_2$ from three separate stacks (S33, S4, and S34). Unit 1 and Unit 2 share a common stack (S33) while Unit 3 and Unit 4 have separate stacks (S4 and S34, respectively). These $SO_2$ limits were established in a revised title V operating permit 145–97–TV(R3) for Mill Creek

[15] On December 16, 2011, EPA established the MATS Rule to reduce emissions of toxic air pollutants for coal or oil power plants larger than 25 megawatts. The rule establishes alternative numeric emission standards, including $SO_2$ (as an alternate to hydrochloric acid), individual non-mercury metal air toxics (as an alternate to particulate matter (PM)), and total non-mercury metal air toxics (as an alternate to PM) for certain subcategories of power plants. CAA section 112, MACT regulations for coal-and oil fired EGUs, known as the Mercury and Air Toxics Standards, were targeted at reducing EGU emissions of HAPs (*e.g.,* mercury, hydrochloric acid (HCl), hydrogen fluoride (HF), dioxin, and various metals) and not explicitly targeted at reducing emissions of $SO_2$. Under the MATS, EGUs meeting specific criteria may choose to demonstrate compliance with alternative $SO_2$ emission limits in lieu of demonstrating compliance with HCl emission limits.

[16] Mill Creek was required to comply with the MATS Rule by April 16, 2016 (extended compliance date).

[17] Mill Creek annual $SO_2$ emissions have dropped, from 28,149 tons in 2014 to 3,040 tons in 2017. *See https://ampd.epa.gov/ampd/.*

and became effective on April 5, 2017. Mill Creek demonstrates compliance with the 30-day emission limits through a continuous emission monitoring system on each stack as well as the monitoring of the heat input firing rate of each emission unit. The 30-day $SO_2$ emission limit was established to demonstrate modeled attainment of the 2010 1-hour $SO_2$ standard for the Jefferson County nonattainment area and therefore is separate from the $SO_2$ emission limit of the same numerical value established to comply with the 2012 MATS Rule (*i.e.,* $SO_2$ as a surrogate for hydrochloric acid). These two limits were independently established through unique methodologies and guidance to address distinct and separate CAA requirements for the LG&E Mill Creek facility. Kentucky requested that EPA incorporate into the Jefferson County portion of the Commonwealth's SIP the 30-day $SO_2$ emission limits and operating and compliance parameters (monitoring, record keeping and reporting) established at Plant-wide Specific condition S1-Standards, S2-Monitoring and Record Keeping and S3-Reporting [18] in title V permit 145–97–TV(R3).[19] The accountability of the $SO_2$ emission limits is established through KDAQ's request to include the limits in the SIP and in the attainment modeling demonstration to ensure permanent and enforceable emission limitations as necessary to provide for attainment of the 2010 $SO_2$ NAAQS.

ii. Longer Term Average Limits

Kentucky established an emission limit of 0.20 lb/MMBtu of $SO_2$ emissions, for each individual coal-fired emission unit at Mill Creek, on a 30-day average basis. This emission limit applies individually to each of the four coal-fired units (U1 thru U4), which emit $SO_2$ from three stacks. Unit 1 and Unit 2 have a joint stack (Stack ID S33) while Unit 3 and Unit 4 each have separate stacks (Stack IDs S4 and S34, respectively). As discussed above in the emissions data section, modeling was performed by Jefferson County and the Commonwealth to determine an appropriate CEV, in g/s, for each of the three stacks (stack S33, which serves Units 1 and 2, was modeled at 225.4 g/s; stack S4, which serves Unit 3, was modeled at 152.6 g/s; and stack S34, which serves Unit 4, was modeled at 183.6 g/s). The corresponding candidate 1-hour emission factor limits (in lb/MMBtu) may be calculated by first converting these g/s CEV values to lb/hr (using a standard unit conversion factor of 1 g/s = 7.937 lb/hr) and then dividing by the maximum heat input capacity of each unit, in MMBtu/hr. In each case, the CEV corresponds to an emission factor of 0.29 lb/MMBtu. Since Units 1 and 2 share a stack (S33), the relevant maximum heat input capacity was the combined value for both units (6,170 MMBtu/hr total). Unit 3 has a maximum heat input capacity of 4,204 MMBtu/hr and vents to a single stack (S4), and Unit 4 has a maximum heat input capacity of 5,025 MMBtu/hr and vents to a single stack (S34).

As discussed further below, Kentucky used the procedures in EPA's April 2014 $SO_2$ nonattainment guidance to determine a compliance ratio (adjustment factor) of 0.69, which when multiplied by 0.29 lbs/MMBTU yields a 30-day average limit of 0.20 lbs/MMBTU. Each of the four emission units were subject to this 0.20 lb/MMBtu 30-day average permit limit effective April 5, 2017. EPA generally defines the term CEV to mean the 1-hour emission rate for an individual stack that, in combination with the other CEVs for other relevant stacks, is shown through proper modeling to yield attainment. As mentioned above, Kentucky developed a set of CEVs (one per stack) in each case corresponding to an hourly limit of 0.29 lb/MMBtu and demonstrated with AERMOD modeling that these CEVs show modeled compliance with the NAAQS. Unit 1 and Unit 2 have a joint stack (S33) and a combined wet FGD control, while Unit 3 and Unit 4 have separate stacks (S4 and S34, respectively), each with individual wet FGD controls.

EPA's $SO_2$ nonattainment guidance recommends that any longer term average emission limit should be comparably stringent to the 1-hour limit that has been shown to provide for attainment of the 2010 $SO_2$ standard. The guidance recommends a procedure, detailed in Appendix C, for determining an adjustment factor which may be multiplied times the candidate 1-hour limit to derive a longer term limit that may be estimated to be comparably stringent to the 1-hour limit. Using this procedure (discussed in section II above) and using hourly emission data provided by EPA's Air Markets Program Data database for Mill Creek for the period 2009–2013 (*i.e.,* before the wet FGD replacements), Kentucky determined an adjustment factor of 0.69. Multiplication of this adjustment factor times the candidate 1-hour limit yielded the 0.20 lb/MMBtu 30-day average permit limit that Kentucky established in Mill Creek's title V permit effective April 5, 2017. The period from 2009 to 2013 was a period of stable operation prior to the wet FGD replacements (which were made between late 2014 to mid-2016), a time when similar but less efficient wet FGDs were used for $SO_2$ emission control for each coal-fired unit. EPA believes that these data were the best data available at the time to Kentucky for estimating the variability of emissions to be expected at Mill Creek upon compliance with the permit limits. At the time Kentucky conducted its assessment, only a small amount of post-replacement data was available. Use of a mix of pre-replacement and post-replacement data would have yielded a distorted analysis of variability. Therefore, the 2009 to 2013 data from Mill Creek provided the best representation available to Kentucky of the variability of emissions to be expected from this plant.

Additionally, the 2009–2013 emissions data set yielded an adjustment factor slightly lower (more conservative) than the average 30-day adjustment factor (0.71) included in Table 1 of Appendix D of EPA's $SO_2$ nonattainment guidance for emission sources with wet scrubbers. The results provided in Appendix D were intended to provide insight into the range of adjustment factors that may be considered typical. For these reasons, EPA believes the 0.69 adjustment factor calculated by Kentucky is an appropriate estimate of the degree of adjustment needed to derive a comparably stringent 30-day average emission limit for this facility.

In accordance with EPA's $SO_2$ nonattainment guidance, the Commonwealth used the distribution of hourly emissions to determine a corresponding distribution of 30-operating day longer term emission averages at the end of each operating day. The 99th percentile of the 1-hour average emission values and the 4th maximum value of the 30-day average emission values [20] for each year were

[18] The plant-wide specific conditions S2-Monitoring and Recordkeeping and S3-Reporting reference specific compliance parameters for the 30-day $SO_2$ emission limit for each individual EGU (U1, U2, U3 and U4). Therefore, the specific $SO_2$ monitoring and recordkeeping and reporting requirements, for each EGU are located at the Specific Conditions S2-Monitoring and Recordkeeping (b) and S3-Reporting (b) for $SO_2$.

[19] EPA notes that Kentucky originally requested that EPA incorporate into the Kentucky SIP the per unit $SO_2$ emission limits for Mill Creek along with compliance parameters that were established in title V permit 145–97–TV(R2). However, through a supplement Louisville has subsequently requested EPA incorporate portions of permit 145–97–TV(R3) which contains the new 0.20 lb/mmBtu per unit emission limit based on a 30-day averaging time.

[20] EPA notes that the $SO_2$ nonattainment guidance recommends the compliance ratio be determined based on the 99th percentile of 30-day values instead of the 4th maximum value used by Kentucky. Kentucky also computed the compliance ratio using the 99th percentile and determined that

calculated, then the average value of the five years' 99th percentile value was determined. The adjustment factor was calculated as the ratio of the 99th percentile for the longer term average to the 99th percentile hourly average emissions for each of the four boilers at Mill Creek, separately. The adjustment factors for each of the four units (0.64, 0.68, 0.75 and 0.68) were averaged together to arrive at a single compliance ratio of 0.69. The average compliance ratio was then applied to the 0.29 lb/MMBtu hourly emission rate to create a comparably stringent long term (30-day) emission limit of 0.20 lb/MMBtu, which was imposed on each emission unit individually. EPA believes that use of an average adjustment factor is a suitable means of projecting future variability of the four units at the plant because the use of an average adjustment factor is likely to yield similar results to use of unit-specific adjustment factors; indeed, Kentucky determined that annual potential total $SO_2$ emissions based on use of an average adjustment factor (with a limit of 0.20 lb/MMBtu for all units) are about 137 tpy less than would be allowed with limits of 0.29 lb/MMBtu adjusted by unit-specific adjustment factors.

Based on a review of the Commonwealth's submittal and EPA's additional analysis described below, EPA believes that the 30-day average 0.20 lb/MMBtu limit for each of the four boilers at Mill Creek provides a suitable alternative to establishing a 1-hour average emission limit for each unit at this source. The Commonwealth has used a suitable data base and has derived an adjustment factor that yields an emission limit that has comparable stringency to the 1-hour average limit that Kentucky determined would otherwise have been necessary to provide for attainment. While the 30-day rolling average limit allows occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the Commonwealth's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit.

EPA's $SO_2$ nonattainment guidance recommends evaluating ''whether the longer term average limit, potentially in combination with other limits, can be expected to constrain emissions sufficiently so that any occasions of emissions above the critical emission value will be limited in frequency and magnitude and, if they occur, would not be expected to result in NAAQS violations.'' For this purpose, EPA analyzed Air Markets Program Data available from EPA. Mill Creek completed replacements of the FGD equipment during the period from December 2014 to June 2016. EPA believes that the emissions data available after completion of the replacements are the data that best indicate the likely frequency of hourly emission levels above the critical emission value. At the time EPA conducted its analysis, these data were available through the end of March 2018. Therefore, in addition to the analysis submitted by Kentucky, EPA analyzed hourly emissions obtained from the EPA Air Markets Program Data for Mill Creek for the period April 2016 to March 2018,[21] which encompasses the time after all the wet FGD replacements were completed and the facility was operating under a 0.20 lb/MMBtu emission limitation. During this time Units 1, 2 and 3 did not have any 30-day average values above 0.20 lb/MMBtu, these units each had only 0.1 percent of the hours exceeding the ''critical emission factor'' of 0.29 lb/MMBtu. Although Unit 4 slightly exceeded 0.20 lb/MMBtu approximately 5.4 percent of the 30-day averages during this period (based on Kentucky's compliance determination procedures), this unit only exceeded the ''critical emission factor'' of 0.29 lb/MMBtu for 0.5 percent of the hours. Therefore, EPA is proposing to conclude that Mill Creek can reasonably be expected to exceed the critical emission value only rarely. For details of this analysis, please refer to the spreadsheet titled ''Mill Creek Analysis of Values Above the Critical Emission Rate'' in the Docket for this proposal action.

For reasons described above and explained in more detail in EPA's $SO_2$ nonattainment guidance, EPA believes appropriately set longer term average limits provide a reasonable basis by which nonattainment plans may provide for attainment. Based on its review of this information as well as the information in the Commonwealth's plan, EPA proposes to find that the 30-day average limits for Mill Creek provide for attainment of the $SO_2$ standard. Furthermore, EPA notes that 2015–2017 quality-assured and certified design value for the Watson Lane monitor (AQS ID: AQS ID: 21–11–0051) in the nonattainment area is 31 ppb, which is below the 1-hour $SO_2$ standard.

The Commonwealth requested EPA approve into the Jefferson County portion of the Kentucky SIP, the 30-day, 0.20 lb/MMBtu $SO_2$ emission limit for each boiler as well as operating and compliance parameters (monitoring and reporting requirements) established in Mill Creek's title V permit 145–97–TV (R3). EPA has evaluated these emissions limits and proposes to determine that these limits provide for attainment of the 2010 $SO_2$ NAAQS.

5. Background Concentration

Background concentrations of $SO_2$ were included in the modeling using 2013–2015 season-by-hour monitoring data from the Green Valley Road monitor (AQS ID: 18–043–1004) located in New Albany, Indiana. Use of the season-by-hour data is one of the approaches for calculating background concentrations provided in the $SO_2$ nonattainment guidance. The season-by-hour background values ranged from 2.13 ppb to 20.67 ppb. This monitor is located approximately 29 km to the north of the Mill Creek facility in the vicinity of many $SO_2$ emissions sources, including the Duke Energy Indiana, LLC, Gallagher Generating Station coal-fired power plant with 3,500 tpy of $SO_2$ emissions in 2014, which is located approximately 5 km upwind of the monitor. This source, along with other sources in the area upwind of the monitor (including numerous small area sources in the City of Louisville and the Louisville Gas and Electric Company, Cane Run Station power plant), emitted approximately 13,000 tpy of $SO_2$ in 2014. The background concentrations from the Green Valley ambient air monitor were used by the Commonwealth to account for $SO_2$ impacts from all sources besides the Mill Creek facility, which was explicitly modeled with AERMOD to develop an appropriate emissions limit. The Commonwealth evaluated other $SO_2$ monitors in the Louisville area that are closer to the Mill Creek facility and the nonattainment area, including the Watson Lane (AQS ID: 21–111–0051), Cannons Lane (AQS ID: 21–111–0067) and Algonquin Parkway/Firearms Training (AQS ID: 21–111–1041) monitors. However, the Commonwealth determined that each of these monitors had issues with data completeness during the 2013–2015 timeframe and thus were not available for use in their modeling analysis.

EPA is supplementing the attainment demonstration modeling provided by the Commonwealth with an independent analysis to assess the conclusion that the Green Valley background monitor adequately

the individual compliance ratios for each unit did not change because the 99th percentile values are close to the 4th maximum values.

[21] FGD replacements were not complete for Unit 3 until June 2016, so the period analyzed for Unit 3 was from July 2016 to March 2018.

represents background concentrations of $SO_2$ within this nonattainment area, including the impact from Kosmos that is located outside but adjacent to the nonattainment area to the southeast of the Mill Creek facility. The Commonwealth states in its submission that the Green Valley monitor was determined to be the most appropriate and representative background monitor for the demonstration and that it accounts for impacts from all sources not explicitly modeled, including Kosmos. As described below, EPA's independent analysis supports KDAQ's conclusion that the Green Valley monitor adequately represents impacts from all unmodeled sources including those from Kosmos.

EPA evaluated whether Kosmos, which is located in close proximity to the nonattainment area boundary (less than 0.50 km), should be considered a ''nearby source'' or an ''other source'' as these terms are defined in Section 8.3.1 of EPA's *Guideline* contained in 40 CFR part 51, Appendix W (Appendix W).[22] Section 8.3.1.a.i of Appendix W discusses evaluating significant concentration gradient in the vicinity of the source under consideration for SIP emissions limits for determining if other sources in the area are adequately represented by background ambient monitoring. Section 8.3.3.b.ii of Appendix W further describes the assessment of concentration gradients and states that ''the magnitude of a concentration gradient will be greatest in the proximity of the source and will generally not be significant at distances greater than 10 times the height of the stack(s) at that source without consideration of terrain influences.'' The height of the cement kiln stack at Kosmos is 75 feet (approximately 23 meters) and there are no significant terrain features located near Kosmos or within the nonattainment area boundary. Evaluating the concentration gradients for Kosmos using the ''10 times stack height'' general rule of thumb indicates that concentration gradients should be comparatively modest beyond 230 meters from the stack. The closest edge of the nonattainment boundary is approximately 480 meters from the stack, which is more than twice the distance of this general rule of thumb. Therefore, EPA believes that the $SO_2$ emissions from Kosmos likely would not result in a significant concentration gradient within the nonattainment area boundary.

EPA also evaluated whether the Green Valley background monitor data is adequately representative of potential $SO_2$ concentration impacts from Kosmos within the nonattainment area. This evaluation consisted of an assessment of wind patterns in the Louisville area, the $SO_2$ emissions sources in the vicinity of the Green Valley monitor, and comparing those sources to the Kosmos source. EPA evaluated wind data from 2011–2015 from the Louisville Standiford Field Airport to determine the predominant wind patterns. The results of this analysis show that winds blow predominately from the southeast, south and southwest directions. EPA then identified significant $SO_2$ emissions sources located south, southeast and southwest of the Green Valley monitor. The Commonwealth used Green Valley ambient concentration data from the 2013–2015 time period for the background concentrations. Therefore, EPA used $SO_2$ emissions data contained in the 2014 NEI to evaluate sources in the vicinity of the Green Valley monitor. EPA's evaluation of sources in the 2014 NEI found that a large coal fired power plant, the Duke Energy Indiana, LLC, Gallagher Generating Station, with $SO_2$ emissions of 3,500 tpy, is located approximately 5 km southwest of the Green Valley monitor. Also, the Louisville Gas and Electric Company, Cane Run Station reported 8,700 tpy of $SO_2$ emissions in 2014 and is located approximately 15 km southwest of the Green Valley monitor. Further, the City of Louisville and its associated numerous small area $SO_2$ emissions sources (*e.g.,* diesel vehicles and generators) is located within 9 km southeast of the monitor. Combined, these sources total over 13,000 tpy of $SO_2$ emissions (according to the 2014 NEI) located upwind of the monitor and contribute to the measured $SO_2$ season-by-hour concentrations in 2013–2015 that ranged from 2.13 ppb to 20.67 ppb.

EPA used its Emissions Inventory System (EIS) Gateway to obtain emissions data for Kosmos for comparison to the emissions sources impacting the Green Valley monitor. The EIS Gateway data for Kosmos show $SO_2$ emissions of 207 tpy in 2014, 289 tpy in 2015, and 364 tpy in 2016. These emissions data demonstrate that Kosmos' $SO_2$ emissions are much less than the emissions sources that are contributing to the measured concentrations at the Green Valley background monitor. While Kosmos is located much closer to the nonattainment area boundary (approximately 0.5 km) than the distance the larger sources of emissions are from the Green Valley monitor (from 5 km to 15 km), the sources near the Green Valley monitor have more than an order of magnitude more emissions than Kosmos. EPA believes that the net effect of these compensating differences is that the Green Valley monitor reasonably indicates the impact of Kosmos on the nonattainment area.

Based upon EPA's analyses summarized above, EPA is proposing to concur with the Commonwealth's use of ambient $SO_2$ concentration data from the Green Valley monitor to account for potential impacts from Kosmos and all other emissions sources located outside the nonattainment area that were not explicitly modeled in the attainment demonstration modeling analysis.

6. Summary of Modeling Results

The AERMOD modeling resulted in a maximum modeled design value of 190.1 micrograms per cubic meter or 72.6 ppb, including the background concentration, which is below the 1-hour $SO_2$ NAAQS of 75 ppb. As discussed above, the AERMOD modeling used hourly $SO_2$ emissions for each stack equivalent to the hourly $SO_2$ emission rate of 0.29 lb/MMBtu, which was used to derive the 30-day average emission limit for the four coal-fired boilers at the Mill Creek facility. Effective June 8, 2016, the Mill Creek facility completed installation of improved wet FGD $SO_2$ controls on all three stacks, and became subject the new 30-day $SO_2$ emission limits on April 5, 2017, which has reduced $SO_2$ emissions by approximately 89 percent from 2014 emission levels.[23] Furthermore, the Watson Lane

[22] EPA had previously indicated that Kosmos should be treated as a ''nearby source.'' This position was communicated to the Commonwealth in comments on the Prehearing Attainment Demonstration SIP in a letter dated April 18, 2017. EPA has subsequently performed additional analysis (discussed later in this section), and believes that it is appropriate to treat Kosmos as an ''other source,'' which can be addressed using a representative ambient background concentration. As an additional measure, Kentucky and Jefferson County have elected to conduct air quality monitoring to better characterize the ambient concentrations of $SO_2$ in the vicinity of the Kosmos facility through an agreed Board Order with Kosmos. The Board Order, approved by Jefferson County Board on April 19, 2017, requires the facility to deploy an ambient air monitor in accordance with 40 CFR part 58 and EPA's nonattainment guidance ''$SO_2$ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document'' (Monitoring TAD February 2016) and includes a remediation plan indicating if monitored violations of the NAAQS occur, Kosmos agrees to make changes to their operations to prevent future violations. EPA Region 4 approved the monitor location in a letter dated February 1, 2018. Please see the Board Order located in the Docket for this proposed rule at EPA–R04–OAR–2017–0625.

[23] Mill Creek annual $SO_2$ emissions have dropped, from 28,149 tons in 2014 to 3,040 tons in 2017. *See https://ampd.epa.gov/ampd/.*

monitoring data trends during the timeframe corroborate the significant $SO_2$ reductions from Mill Creek facility, supporting EPA's view that limiting Mill Creek emissions adequately will assure attainment. EPA has evaluated the modeling procedures, inputs and results and proposes to find that the results of the Commonwealth's modeling analysis demonstrate that the limits on Mill Creek assure that there will be no violations of the NAAQS within the nonattainment area.

*C. RACM/RACT*

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the NAAQS. Additionally, 172(c)(6) require SIPs to contain enforceable emissions limitations and other control measures to ''provide for attainment'' of the NAAQS. EPA interprets RACM, including RACT, under section 172, as measures that a state determines to be reasonably available and which contribute to attainment as expeditiously as practicable for existing sources in the area.

Kentucky's plan for attaining the 1-hour $SO_2$ NAAQS in the Jefferson County $SO_2$ nonattainment area included a review of three control measures as potential options which could be implemented at Mill Creek to reduce ambient $SO_2$ concentrations and attain the $SO_2$ NAAQS: More efficient scrubber operation; increased stack height; and restriction of high sulfur fuels. The Commonwealth in coordination with the District determined that FGD is the appropriate control strategy and represents RACT/RACM for the nonattainment area. The new controls increase Mill Creek's ability to control $SO_2$ emissions from previously permitted levels, *i.e.,* around 90 percent, to a 98 percent removal rate. Emissions are expected to be reduced from actual emissions of 29,994 tpy in 2011 to a projected post-control level of 13,489.5 tpy. Effective June 8, 2016, the Mill Creek facility completed installation of improved wet FGD $SO_2$ controls on all three stacks, and became subject the new 30-day $SO_2$ emission limits on April 5, 2017 (discussed in section IV.B.4 above). The replaced FGD controls and April 5, 2017 compliance with the 30-day $SO_2$ emission limits has resulted in reduced $SO_2$ emissions at Mill Creek by approximately 89 percent since 2014 emission levels.[24] Furthermore, the monitoring data trends during the time period corroborate the existence of the substantial air quality benefits from the significant $SO_2$ reductions from Mill Creek facility. The Watson Lane monitor has recorded decreasing $SO_2$ concentrations from an annual 99th percentile value of 148.6 ppb in 2014, 54.2 ppb in 2015, 26.1 ppb in 2016 and 13.7 ppb in 2017. Currently, the quality-assured and certified 2015–2017, 3-year design value for the Watson Lane monitor is 31 ppb, which is well below the 1-hour $SO_2$ standard. In addition to the modeling demonstrating attainment of the $SO_2$ standard, actual monitored 99th percentile of 1-hour daily maximum concentrations at the Watson Lane do not show violations of the NAAQS. On this basis, Jefferson County determined that no additional measures could contribute to attainment as expeditiously as practicable. Therefore, the FGD controls for the Mill Creek Generating Station was determined to constitute RACT/RACM for the nonattainment area. Kentucky has determined that these measures suffice to provide for timely attainment. EPA preliminarily concurs with Kentucky's approach and analysis, and proposes to conclude that the Commonwealth has satisfied the requirement in section 172(c)(1) and (6) to adopt and submit all RACT/RACM and emission limitations and control measures as needed to attain the standard as expeditiously as practicable.

*D. New Source Review (NSR)*

EPA last approved Louisville's NNSR regulations 2.04—*Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emissions Offset Requirements)* on October 23, 2001 (66 FR 53660). These rules provide for appropriate NSR for $SO_2$ sources undergoing construction or major modification in any nonattainment area in Jefferson County including the $SO_2$ nonattainment area without need for modification of the approved rules. Therefore, EPA proposes to conclude that this requirement is met for this Area through Louisville's existing NSR rules.

*E. Reasonable Further Progress (RFP)*

CAA section 172(c)(2) requires attainment plan to require RFP, which is defined in CAA section 171(1) as ''annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the $SO_2$ NAAQS by the statutory attainment date.'' For pollutants like $SO_2$ where a limited number of sources affect air quality, the General Preamble and the $SO_2$ nonattainment guidance explain that RFP is best construed as an ambitious compliance schedule. As discussed above, LG&E completed installation of FGD replacement scrubbers for all four coal-fired boilers at Mill Creek on June 8, 2016 (Unit 4 new FGD went into service on December 9, 2014; Units 1 and 2's new FGD went into service on May 27, 2015; and Unit 3 [25] new FGD went into service on June 8, 2016) to comply with EPA's MATS extended compliance date of April 16, 2016. However, for purposes of demonstrating attainment of the 2010 $SO_2$ standard, Kentucky established an independent $SO_2$ emission limit of 0.20 lb/MMBtu for Mill Creek (title V operating permit 145–97–TV(R3) based on the $SO_2$ emission reductions from the FGD replacement. All FGD controls are currently installed and operational at Mill Creek and the facility is currently complying with the 30-day emission limits as of April 5, 2017 (the date the revised title V permit was issued).[26] EPA has evaluated these emissions limits and proposes to determine that these limits provide for modeled attainment of the 2010 $SO_2$ NAAQS in the Jefferson County nonattainment area.

$SO_2$ emissions within the nonattainment area have decreased approximately 89 percent since 2014, which correlates to a reduction of $SO_2$ concentrations recorded at the Watson Lane monitor during this period.[27] Kentucky finds that this plan requires the affected sources implement appropriate control measures as expeditiously as practicable to ensure attainment of the standard by the applicable attainment date. Mill Creek

[24] According to the CAMD data, Mill Creek annual $SO_2$ emissions have dropped, from 28,149 tons in 2014 to 3,040 tons in 2017. *See https://ampd.epa.gov/ampd/.*

[25] Unit 3 ceased operation on April 9, 2016, to comply with the extended MATS compliance date and did not return to service until all controls and construction necessary to comply with MATS were completed.

[26] See Mill Creek Generating Station title V operating permit No. 145–97–TV(R3) in the Docket (ID: EPA–R04–OAR–2017–0625) for this proposal action.

[27] According to CAMD data, annual $SO_2$ emissions have dropped, from 28,149 tons in 2014 to 14,082 tons in 2015. Subsequent years have reported further reductions with 4,335 tons in 2016 and 3,040 tons in 2017. The Watson Lane monitor (AQS ID: 21–111–0051), located less than 2 km east of the Mill Creek facility, recorded decreasing $SO_2$ concentrations from an annual 99th percentile value of 148.6 ppb in 2014, 54.2 ppb in 2015, 26.1 ppb in 2016 and 13.7 ppb in 2017.

has met the limits in Kentucky's plan by the April 5, 2017 compliance date (effective date of the new 30-day $SO_2$ emission limits). Therefore, Kentucky concludes that this plan provides for RFP in accordance with EPA's April 2014 $SO_2$ nonattainment guidance. Currently, the Watson Lane monitor 2015–2017 quality-assured and certified $SO_2$ design value is below the 1-hour NAAQS at 31 ppb, EPA expects the Area to show attainment of the 2010 standard by the statutory attainment date. EPA proposes to concur and concludes that the plan provides for RFP, as specified in the General Preamble and the $SO_2$ nonattainment guidance, and therefore satisfies the requirements of CAA section 172(c)(2).

*F. Contingency Measures*

As noted above, EPA's $SO_2$ nonattainment guidance describes special features of $SO_2$ planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for $SO_2$, such that an appropriate means of satisfying this requirement is for the Commonwealth to have a comprehensive enforcement program that identifies sources of violations of the $SO_2$ NAAQS and to undertake an aggressive follow-up for compliance and enforcement. Kentucky's plan provides for satisfying the contingency measure requirement in this manner. Jefferson County is authorized by Kentucky Revised Statutes Chapter 77 to ensure that control strategies, including reasonably achievable control technology and contingency measures, necessary to attain the standard by the applicable attainment date are implemented in the nonattainment area. Kentucky's proposed SIP revision has been developed in accordance with this authority. In addition, if a monitored exceedance of the $SO_2$ NAAQS occurs in the future and all sources are found to comply with applicable SIP and permit emission limits, Jefferson County will perform the necessary analysis to determine the cause of the exceedance, and determine what additional control measures are necessary to impose on the Area's stationary sources to continue to maintain attainment of the $SO_2$ NAAQS. Jefferson County will inform any affected stationary sources of $SO_2$ of the potential need for additional control measures. If there is a violation of the NAAQS for $SO_2$ within the nonattainment area, then Jefferson County will notify the stationary source that the potential exists for a NAAQS violation. Within six months of notification, the source must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification. The additional control measures will be submitted to the EPA for approval and incorporation into the SIP. EPA preliminarily concurs and proposes to approve Kentucky's plan for meeting the contingency measure requirement as described above and in the proposed SIP revision.

## V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference into the Jefferson County portion of the Kentucky SIP, a $SO_2$ emission limit and specified compliance conditions established in title V permit 145–97–TV(R3) for each coal-fired emissions unit at the LG&E Mill Creek Generating station in Jefferson County nonattainment area. Specifically, EPA is proposing to incorporate into the Jefferson County portion of the Kentucky SIP a 0.20 lb/MMBtu 30-day $SO_2$ emission limit for each EGU (U1, U2, U3 and U4) and operating and compliance conditions (monitoring, recordkeeping and reporting) all established at Plant-wide Specific condition S1-Standards, S2-Monitoring and Record Keeping and S3-Reporting in title V permit 145–97–TV(R3) for EGU U1, U2, U3 and U4. The $SO_2$ emission standards specified in the permit are the basis for the attainment demonstration. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. EPA's Proposed Action

EPA is proposing to approve Kentucky's $SO_2$ nonattainment SIP submission, which the Commonwealth submitted to EPA on June 23, 2017, for attaining the 2010 1-hour $SO_2$ NAAQS for the Jefferson County nonattainment area and for meeting other nonattainment area planning requirements. EPA has preliminarily determined that the nonattainment SIP meets the applicable requirements of sections 110, 172, 191 and 192 of the CAA and nonattainment regulatory requirements at 40 CFR part 51. This $SO_2$ nonattainment plan includes Kentucky's attainment demonstration for the Jefferson County nonattainment area and other nonattainment requirements for RFP, RACT/RACM, NNSR, base-year and projection-year emission inventories, enforceable emission limits and control measures and compliance parameters, and contingency measures. Additionally, EPA is proposing to approve into the Jefferson County portion of the Kentucky SIP, Mill Creek's enforceable $SO_2$ emission limits and compliance parameters (monitoring and reporting) established at Plant-wide Specific condition S1-Standards, S2-Monitoring and Record Keeping and S3-Reporting established in title V permit 145–97–TV(R3).

## VII. Statutory and Executive Orders

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 1, 2018.

**Onis ''Trey'' Glenn, III,**

*Regional Administrator, Region 4.*

[FR Doc. 2018–24582 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2018–0696; FRL–9986–28–OAR]**

**RIN 2060–AU33**

### Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills; Correction

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the **Federal Register** on October 30, 2018, regarding the implementing regulations that govern the Emission Guidelines for Municipal Solid Waste (MSW) Landfills. The listed docket number in that preamble was incorrect. Any comments received prior to this correction have been redirected to the correct docket.

**DATES:** *Comments.* Comments must be received on or before December 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Andrew Sheppard, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4161; fax number: (919) 541–0516; and email address: *sheppard.andrew@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In proposed rule FR 2018–23700, in the issue of Tuesday, October 30, 2018, on page 54527, in the third column, correct the docket numbers listed in the **ADDRESSES** section to read:

''**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0696 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. See **SUPPLEMENTARY INFORMATION** for detail about how the EPA treats submitted comments. *Regulations.gov* is our preferred method of receiving comments. However, the following other submission methods are also accepted:

• *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2018–0696 in the subject line of the message.

• *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2018–0696.

• *Mail:* To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2018–0696, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.''

In proposed rule FR 2018–23700, in the issue of Tuesday, October 30, 2018, on page 54528, make the following correction to the docket numbers listed in the **SUPPLEMENTARY INFORMATION** section. In the second paragraph of the section, in the first column, revise the docket number in the first sentence to say, ''*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2018–0696.''

In the third paragraph of the section, in the first column, revise the docket number in the first sentence to say, ''*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2018–0696.''

In the sixth paragraph of the section, in the third column, revise the docket number in the last sentence to say, ''Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2018–0696.''

Dated: November 2, 2018.

**William L. Wehrum,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2018–24581 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 155 and 156

**[CMS–9922–P]**

**RIN 0938–AT53**

### Patient Protection and Affordable Care Act; Exchange Program Integrity

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise standards relating to oversight of Exchanges established by states, periodic data matching frequency and authority, and the length of a consumer's authorization for the Exchange to obtain updated tax information. This proposed rule would also propose new requirements for certain issuers related to the collection of a separate payment for the premium portion attributable to coverage for certain abortion services. Many of these proposed changes would help strengthen Exchange program integrity.

**DATES:** Comments: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 8, 2019.

**ADDRESSES:** In commenting, please refer to file code CMS–9922–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9922–P, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9922–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Emily Ames, (301) 492–4246, or Christine Hammer, (202) 260–6089, for general information.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

## I. Executive Summary

American Health Benefit Exchanges, or ''Exchanges'' (also called ''Marketplaces'') are entities established under the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Heath Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as PPACA) through which qualified individuals and qualified employers can purchase health insurance coverage. Exchanges that were established by states (State Exchanges) include State-based Exchanges (SBEs) which perform eligibility and enrollment functions, as well as State-based Exchanges on the Federal platform (SBE–FPs) that utilize the Federally-facilitated Exchange's infrastructure to perform eligibility and enrollment functions. Many individuals who enroll in qualified health plans (QHPs) through individual market Exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums, and receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. Eligible individuals can receive the estimated amount of the PTC on an advance basis, known as advance payments of the premium tax credit (APTC), in accordance with section 1412 of the PPACA.

Strengthening program integrity with respect to subsidy payments in the individual market is a top priority of this Administration. Key areas of focus include—(1) ensuring that eligible enrollees receive the correct amount of APTC and cost-sharing reduction (CSR) (as applicable), and do not receive APTC or CSRs for abortion coverage and/or services for which such payments are not available under section 1303 of the PPACA; (2) conducting effective and efficient monitoring and oversight of State Exchanges to ensure that consumers are receiving the correct amount of APTC and CSRs in SBEs, and that State Exchanges are meeting the standards of federal law in a transparent manner; and (3) protecting the interests of taxpayers, and consumers, and the financial integrity of Federally-facilitated Exchanges (FFEs) through oversight of health insurance issuers, including ensuring compliance with Exchange requirements, such as maintenance of records and participation in investigations and compliance reviews, and with the requirements of section 1303 of the PPACA.

The Department of Health and Human Services (HHS) has recently made significant strides in these areas. For example, we have implemented policy-based payments in the FFEs and almost all of the SBEs, a critical system change across Exchanges and issuers that ensures the data used to generate APTC and CSR payments to issuers are verified and associated with particular enrollees.

We also recently implemented pre-enrollment verification of eligibility for applicable individual market special enrollment periods for all Exchanges served by the federal eligibility and enrollment platform (the *HealthCare.gov* platform), ensuring that only those who qualify for special enrollment periods receive them. In the HHS Notice of Benefit and Payment Parameters for 2019 Final Rule (83 FR 16930) (April 17, 2018), we established a policy to require documentary evidence for certain consumers who attest to income that is significantly higher than the amount found in the Exchange's income data. This new check will be conducted for applicants for whom trusted data sources (such as the Internal Revenue Service, the Social Security Administration, the Department of Homeland Security, Veterans Health Administration, Peace Corps, the Department of Defense, Experian, and Carahsoft).[1] This new check will not be performed with respect to non-citizen applicants who are ineligible for Medicaid based on their immigration status, as these applicants may be statutorily eligible for APTC with annual household income below 100 percent of the FPL. An accurate eligibility determination is critical for consumers near this threshold to ensure APTC is not paid on behalf of consumers who are statutorily ineligible for APTC.

In late 2017, we developed an innovative approach to provide additional notification to tax filers who, based on Internal Revenue Service (IRS) data, had received APTC for a prior benefit year but failed to reconcile these payments on their tax returns. The notices explained that the tax filer was required to take action to reconcile these prior APTC payments, or APTC associated with all enrollees for whom the individual is the tax filer would be terminated. While HHS was already contacting these affected households through its standard annual notification processes, this supplemental notice provided further clarification and instruction for the tax filer, while adhering to IRS' protocols regarding the safe disclosure of protected federal tax information.

We continue to explore opportunities to improve program integrity. We work on an ongoing basis on improving program oversight and procedures to conduct comprehensive audits of FFE processes to verify their integrity. These efforts further our goal of protecting consumers enrolled in FFEs and safeguarding taxpayer dollars. We review consumer complaints and allegations of fraud and abuse received by the FFE call center from insurers, as well as law enforcement and states. Additionally, we analyze data to identify issues and vulnerabilities, share relevant information with issuers, and identify administrative actions to stop bad actors and protect consumers.

We are proposing several changes targeting these priorities. First, we are planning changes to the current periodic data matching (PDM) processes, which are the processes through which Exchanges periodically examine

[1] One criterion for eligibility for APTC is an income equal to or greater than 100 percent but not greater than 400 percent of an amount equal to the poverty line based on family size.

available data sources to identify changes that would affect enrollees' eligibility for subsidies. Second, we are planning to add an optional authorization to the Exchange application that would allow an individual to authorize the FFE to receive Medicare eligibility and enrollment information about the enrollee. If an applicant provides this authorization and elects to have the Exchange automatically terminate QHP coverage if the applicant is found to be dually enrolled, then the FFE will end enrollees' QHP coverage on their behalf in such a circumstance, even if the enrollee is not receiving APTC or CSRs. Third, we propose to specify that Exchanges must conduct PDM for Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP), if applicable, at least twice a year, beginning with the 2020 calendar year, to ensure that Exchanges make adequate efforts to discontinue APTC and CSR for those who are eligible for or enrolled in other minimum essential coverage (MEC) and, therefore, are ineligible for APTC or CSRs.

We are also proposing changes to improve program integrity related to State Exchanges. To strengthen the mechanisms and tools HHS uses in its oversight of compliance by State Exchanges with federal requirements, including eligibility and enrollment requirements under 45 CFR part 155, subparts D and E, we are proposing changes that provide further specificity to their program reporting requirements. In addition, to ensure proper eligibility determinations and enrollments in SBEs, we are proposing to clarify the scope of the annual programmatic audits that SBEs are required to conduct and submit results of annually to HHS, and include testing of SBE eligibility and enrollment transactions in the annual programmatic audits.

Lastly, we are proposing changes related to the separate payment requirement in section 1303 of the PPACA. To align the regulatory requirements for issuer billing of the portion of the enrollee's premium attributable to certain abortion services with the separate payment requirement applicable to issuers offering coverage of these services, we are proposing changes to the billing and payment collection requirements for QHP issuers in connection with their plans offered through an individual market Exchange that include coverage for abortion services for which federal funding is prohibited.

## II. Background

### *A. Legislative and Regulatory Overview*

Sections 1311(b) and 1321(b) of the PPACA provide that each state has the opportunity to establish an Exchange. Section 1311(b)(1) of the PPACA gives each state the opportunity to establish an Exchange that both facilitates the purchase of QHPs by individuals and families, and provides for the establishment of a Small Business Health Options Program (SHOP) that is designed to assist qualified employers in the state who are small employers in facilitating the enrollment of their employees in QHPs offered in the small group market in the state.

Section 1313 of the PPACA describes the steps the Secretary of Health and Human Services (the Secretary) may take to oversee Exchanges' compliance with HHS standards related to Title I of the PPACA and ensure their financial integrity, including conducting investigations and annual audits.

Section 1321(a) of the PPACA provides broad authority for the Secretary to establish standards and regulations to implement the statutory standards related to Exchanges, QHPs, and other standards of title I of the PPACA.

Section 1321(c)(2) of the PPACA authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the Public Health Service Act (PHS Act). Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Part A of title XXVII of the PHS Act when a state fails to substantially enforce these provisions.

Section 1411(c) of the PPACA requires the Secretary to submit certain information provided by applicants under section 1411(b) of the PPACA to other federal officials for verification, including income and family size information to the Secretary of the Treasury.

Section 1411(d) of the PPACA provides that the Secretary must verify the accuracy of information provided by applicants under section 1411(b) of the PPACA for which section 1411(c) does not prescribe a specific verification procedure, in such manner as the Secretary determines appropriate.

Section 1411(f)(1)(B) of the PPACA requires the Secretary to establish procedures to redetermine eligibility on a periodic basis, in appropriate circumstances, including for eligibility to purchase a QHP through the Exchange and for APTC and CSRs.

Section 1411(g) of the PPACA allows the exchange of applicant information only for the limited purposes of, and to the extent necessary to, ensure the efficient operation of the Exchange, including by verifying eligibility to enroll through the Exchange and for APTC and CSRs.

On October 30, 2013, we published a final rule entitled, ''Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014,'' (78 FR 65046), to implement certain program integrity standards and oversight requirements for State Exchanges.

Section 1303 of the PPACA, as implemented in 45 CFR 156.280, specifies standards for issuers of QHPs through the Exchanges that cover abortion services for which public funding is prohibited (also referred to as non-Hyde abortion services). The statute and regulations establish that, unless otherwise prohibited by state law, a QHP issuer may elect to cover such non-Hyde abortion services. If an issuer elects to cover such services under a QHP sold through an individual market Exchange, the issuer must take certain steps to ensure that no PTC or CSR funds are used to pay for abortion services for which public funding is prohibited. One such step is that individual market Exchange issuers must determine the amount of, and collect, from each enrollee, a ''separate payment'' for an amount equal to the actuarial value of the coverage for abortions for which public funding is prohibited,[2] which must be no less than $1 per enrollee per month. QHP issuers must also segregate funds for non-Hyde abortion services collected through this payment into a separate allocation account used exclusively to pay for non-Hyde abortion services.

In the 2012 Exchange Establishment Rule, we codified the statutory provisions of section 1303 of the PPACA in regulation at 45 CFR 156.280. On February 27, 2015, we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, (80 FR 10750) (herein after referred to as the 2016 Payment Notice) providing guidance regarding acceptable billing and premium collection methods for the portion of the consumer's total premium attributable to non-Hyde abortion coverage for purposes of satisfying the statutory separate payment requirement.

[2] Section 1303 also specifies how such actuarial value is to be calculated.

*B. Stakeholder Consultation and Input*

HHS has consulted with stakeholders on policies related to the operation of Exchanges. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and state representatives to gather public input, with a particular focus on risks to the individual and small group markets, and how we can alleviate burdens facing patients and issuers. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with State Exchanges through the Exchange Blueprint process and ongoing oversight and technical assistance engagements, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

## III. Provisions of the Proposed Regulations

*A. Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act*

1. Functions of an Exchange (§ 155.200)

Section 155.200 of the PPACA establishes the functions that an Exchange must perform. Section 155.200(c) of the PPACA specifies that the Exchange must perform oversight and financial integrity functions, specifically that the Exchange must perform required functions related to oversight and financial integrity requirements in accordance with section 1313 of the PPACA. HHS interprets this requirement broadly to include program integrity functions related to protecting against fraud, waste, and abuse, including functions not explicitly identified in section 1313 of the PPACA. We believe SBEs have generally interpreted this requirement broadly as well, as evidenced by their engagement in activities designed to combat fraud and abuse related to the Exchange.

However, questions about the breadth of this function have arisen when Exchanges have sought to understand what uses and disclosures of personally identifiable information (PII) are permitted under § 155.260.[3] Specifically, we have received questions about whether Exchanges are permitted under § 155.260 to disclose applicant PII to certain entities, such as the state departments of insurance, when investigating fraudulent behavior related to Exchange enrollments on the part of agents and brokers. We believe that use and disclosure related to Exchange program integrity efforts, like combatting fraud, currently fall under § 155.200(c), but believe the regulation is not as clear as it could be. Therefore, we propose to revise § 155.200(c) to clarify that the Exchanges must perform oversight functions generally, and cooperate with oversight activities, in accordance with section 1313 of the PPACA and as required under 45 CFR part 155, including overseeing its Exchange programs, Navigators, agents, brokers, and other non-Exchange entities as defined in § 155.260(b). Because this change is a clarification and not a new function, we do not believe it would impose additional burdens on State Exchanges, but instead would help resolve questions about whether states have the necessary tools and authority to enable them to effectively oversee and combat potentially fraudulent behavior. We seek comment on this proposal, including with respect to our understanding of the potential imposition of additional burden on State Exchanges.

2. Verification Process Related to Eligibility for Insurance Affordability Programs (§ 155.320)

Currently, under § 155.330, Exchanges are required to periodically examine available data sources to identify, with respect to enrollees on whose behalf APTC or CSRs are being paid, eligibility or enrollment determinations for Medicare, Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange. Individuals identified as enrolled both in Exchange coverage with or without APTC or CSRs and one of these other forms of coverage are referred to as dually enrolled consumers.

If a consumer is eligible for premium-free Medicare Part A or enrolled in Medicare Part A or Part C (also known as Medicare Advantage), all of which qualify as MEC, he or she is not eligible to receive APTC or CSRs to help pay for an Exchange plan or covered services.

The Secretary has broad authority under section 1321(a) of the PPACA to establish regulations setting standards to implement the statutory requirements under title I of the PPACA, including with respect to the establishment and operation of Exchanges, the offering of QHPs through the Exchanges, the establishment of statutory reinsurance and risk adjustment programs, and such other requirements as the Secretary determines appropriate. Additionally, section 1411(g) of the PPACA allows the exchange of certain applicant information as necessary to ensure the efficient operation of the Exchange, including verifying eligibility to enroll in coverage through the Exchange and to receive APTC or CSRs.

Section 155.320(b)(2) specifies that the disclosure to HHS of information regarding eligibility for and enrollment in a health plan that is a government program, which may be considered protected health information (PHI), is expressly authorized for the purposes of verification of applicant eligibility for MEC as part of the eligibility determination process for APTC or CSRs. Section 155.430(b)(1)(ii) requires an Exchange to provide an opportunity at the time of plan selection for an enrollee to choose to remain enrolled in a QHP if he or she becomes eligible for other MEC, or to terminate QHP coverage if the enrollee does not choose to remain enrolled in the QHP upon completion of the redetermination process. As such, we added language to the existing single, streamlined application used by Exchanges using the federal eligibility and enrollment platform to allow consumers to authorize the Exchange to obtain eligibility and enrollment data and, if desired, to end their QHP coverage if the Exchange finds that the consumer has become eligible for or enrolled in other qualifying coverage, such as Medicare, Medicaid/CHIP, or BHP, during periodic checks.

In addition, for plan years beginning with the 2020 plan year, we also plan to add a new authorization to the single, streamlined application used by Exchanges using the federal eligibility and enrollment platform, which will meet Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) standards regarding how one's PHI is collected and used. This new authorization will expand the current scope of Medicare PDM to individuals in the Exchange population not receiving financial assistance who authorize the FFE to conduct certain PDM for them. Specifically, this new authorization will allow applicants or QHP enrollees, whether or not they have applied for or are receiving APTC or CSRs, to authorize the Exchange, when conducting Medicare PDM, to request PHI from HHS such as their name,

[3] Section 155.260 limits an Exchange's use and disclosure of PII when an Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a qualified health plan; determining eligibility for other insurance affordability programs, as defined in § 155.300; or determining eligibility for exemptions from the individual shared responsibility provisions in section 5000A of the Code. One of the permitted uses and disclosures is for the Exchange to carry out the functions described in § 155.200.

Social Security Number, Medicare eligibility or enrollment status, and other data elements the Exchange may determine necessary, to allow the Exchange to determine whether the consumer is simultaneously enrolled in Medicare and, if requested, to act on the enrollee's behalf to terminate QHP coverage in cases of dual enrollment. We note that, because entitlement to premium-free Medicare Part A is based on age and information held by the Social Security Administration (that is, the number of quarters of coverage toward a Social Security benefit under Title II of the Act), the Exchange will not be able to identify through this process any consumer who is eligible for premium-free Part A; we encourage all consumers who are age 65 and older to apply with the Social Security Administration to receive an eligibility determination with respect to Medicare. Our adoption of this new optional authorization to access Medicare enrollment information does not extend to access to Medicaid, CHIP, or BHP information for applicants who are not receiving APTC or CSRs, because these programs are targeted to relatively lower income consumers and we would not expect to identify a significant number of enrollees dually enrolled in one of these programs and an unsubsidized QHP through the Exchange.

For consumers who request voluntary termination upon a finding of dual enrollment, the Exchange would terminate coverage after following the current PDM process outlined in § 155.330(e)(2)(i), which requires the Exchange to provide notice of the updated information the Exchange has found and a 30-day period for the enrollee to respond. For example, upon receiving the required notice, the enrollee could (1) return to the Exchange and terminate his or her QHP coverage, (2) revoke the prior authorization for the Exchange to terminate his or her QHP coverage in the event dual enrollment is found, so that he or she would remain enrolled both in the QHP and in Medicare, or (3) notify the Exchange that he or she is not eligible for, or enrolled in, Medicare. For consumers who revoke their prior authorization for the Exchange to terminate their QHP enrollment where the Exchange finds the enrollee is eligible for or enrolled in Medicare, or who disagree that they are eligible for or enrolled in Medicare, the Exchange would only proceed to terminate the enrollee's APTC and CSRs, and not his or her enrollment in QHP coverage through the Exchange, using the process specified in § 155.330(e)(2)(i). Again, as the Exchange cannot identify through this process those consumers who are eligible for but not enrolled in premium-free Part A, we encourage all consumers who are 65 and older to apply with the Social Security Administration to receive an eligibility determination with respect to Medicare.

Based on our experience performing Medicare PDM, we believe that many consumers are inadvertently enrolled in Medicare and QHP coverage at the same time, and that their dual enrollment does not represent an informed decision. For example, we have found that, once consumers are informed of the consequences of their dual enrollment, such as paying full price for a QHP and risk for financial penalties for delaying Medicare Part B enrollment, the majority of consumers end their QHP coverage shortly thereafter. Furthermore, our own internal analyses show that the majority of QHP enrollees who become dually enrolled do so by aging into Medicare and failing to terminate the APTC or CSRs they are receiving through the Exchange (and, if desired, their Exchange coverage itself) during their Medicare initial enrollment period. We believe that Exchanges should play an important role in helping to ensure that consumers, regardless of whether the consumer has applied for, or is receiving, APTC or CSRs through the Exchange, are aware of their dual enrollment, the fact that their QHP coverage may duplicate coverage available to them through Medicare at potentially lower expense, and their potential risk for tax liability for APTC received during months of overlapping coverage (for consumers receiving APTC) or financial penalties (such as the Medicare Part B late enrollment penalty if they delay enrolling in Medicare during their initial eligibility period).

We believe these changes will support HHS's program integrity efforts regarding the Exchanges by helping promote a balanced risk pool for the individual market as Medicare and Medicaid/CHIP beneficiaries tend to be higher utilizers of medical services, ensuring that consumers are accurately determined eligible for APTC and income-based CSRs, and safeguarding consumers against enrollment in unnecessary or duplicative coverage. Such unnecessary or duplicative coverage, coupled with typically higher utilization, generally results in higher premiums across the individual market, leading to unnecessarily inflated expenditures of federal funds on PTC for taxpayers eligible for PTC in the individual market. We also encourage SBEs and enhanced direct enrollment partners to adopt these changes if they are not already using the single, streamlined application. We seek comment on these plans.

3. Eligibility Redetermination During a Benefit Year (§ 155.330)

In accordance with § 155.330(d), Exchanges must periodically examine available data sources to determine whether enrollees in a QHP through an Exchange with APTC or CSRs have been determined eligible for or enrolled in other qualifying coverage through Medicare, Medicaid, CHIP, or the BHP, if applicable. HHS has not previously defined ''periodically.'' Currently, FFEs conduct Medicare PDM and Medicaid/CHIP PDM twice a year. To ensure that all Exchanges are taking adequate steps to check for enrollees who have become eligible for or enrolled in these other forms of MEC, and to terminate APTC and CSRs if so, we propose to add a clearer requirement to conduct Medicare, Medicaid/CHIP, and BHP, if applicable, periodic data matching with regular frequency. Specifically, we propose to add paragraph (d)(3) to specify that Exchanges conduct Medicare, Medicaid/CHIP, and BHP, if applicable, PDM at least twice a year, beginning with the 2020 calendar year. We believe this timeframe will give Exchanges that are not already performing these PDM checks twice a year sufficient time to implement any business, operational, and information technology changes needed to comply with the proposed new requirement. Based on HHS's experience, Exchanges should consider spacing Medicare, Medicaid/CHIP, and BHP, if applicable, PDM checks evenly throughout the year, which we believe would help ensure the greatest number of potentially affected enrollees are identified and notified. Further, we do not anticipate that the proposal—to apply Medicare PDM to those enrollees who are not receiving APTC/CSRs but authorize the Exchange to receive Medicare enrollment information—would add significant costs to performing Medicare PDM. Based on HHS's experience, the dually enrolled unsubsidized population is significantly smaller than the population receiving APTC/CSRs. We believe this policy would likely reduce QHP premiums and improve program integrity for all Exchanges, since Medicare and Medicaid/CHIP beneficiaries tend to have a higher risk profile than a typical Exchange enrollee and, therefore, may have negative impacts on the risk pool because of the typically increased utilization of services expected for these populations,

which include significant numbers of older and disabled beneficiaries or poorer health outcomes associated with lower income statuses.[4] As noted above, this negative effect on the risk pool likely results in higher premiums across the individual market, leading to increased expenditures of federal funds on PTC for taxpayers eligible for PTC resulting from unnecessary or duplicative coverage. So that the FFEs and SBEs may prioritize the implementation of the proposed requirement to conduct PDM for Medicare, Medicaid, CHIP, and BHP (if applicable) eligibility or enrollment at least twice yearly, we are not proposing to require Exchanges to perform PDM for death at least twice in a calendar year. We will consider whether to require this check to be performed at a particular frequency through future rulemaking.

Since most SBEs have shared, integrated eligibility systems with their respective Medicaid programs, Medicaid/CHIP and BHP, if applicable, PDM requirements may be met differently for SBEs than for the FFEs. While there is some variation among SBEs in their Medicaid/CHIP and BHP, if applicable, PDM processes, most SBEs have implemented fully integrated eligibility systems where the design of the system mitigates risk of dual enrollment in, or inconsistent eligibility results regarding, APTC/CSRs and Medicaid/CHIP and BHP, if applicable, coverage by having one eligibility rules engine for eligibility determinations for all these programs. In these SBEs, an individual cannot be enrolled in both a QHP through the Exchange with APTC/CSRs, and Medicaid/CHIP or BHP, if applicable, coverage, at any given time. At paragraph (d)(3), we propose to specify that we will deem these SBEs to be in compliance with the requirement to perform Medicaid/CHIP PDM or BHP PDM, if applicable. SBEs that do not have fully integrated eligibility systems for APTC/CSRs and Medicaid/CHIP would be required to perform Medicaid/CHIP PDM at least twice a year. Similarly, SBEs in states that have implemented the BHP, but where the BHP is not integrated into the state's shared eligibility system, would be required to perform BHP PDM at least twice a year. We anticipate most SBEs will meet or exceed the proposed requirements for Medicaid/CHIP PDM and BHP PDM, if applicable, based on current or planned operations for calendar year 2018, as reported to us through the State-based Marketplace Annual Reporting Tool and through technical assistance engagements. Therefore, we anticipate that the proposed requirement to conduct Medicaid/CHIP PDM and BHP PDM, if applicable, at least twice a year would not result in a significant administrative burden for SBEs that are not deemed to be in compliance (and no administrative burden for those that are so deemed).

Although we believe that compliance by SBEs with these proposed requirements is critically important for program integrity, we are not proposing specific penalties if SBEs do not comply. However, we note that under current authority HHS requires a SBE to take corrective action if it is not complying with federal guidance and regulations. We utilize specific oversight tools (SMART, programmatic audits, etc. as described in the preamble to § 155.1200) to identify issues with, and place corrective actions on Exchanges, and provide technical assistance and ongoing monitoring to track those actions until the Exchange comes into compliance.

Additionally, under section 1313(a)(4) PPACA, if HHS determines that an Exchange has engaged in serious misconduct with respect to compliance with Exchange requirements, it has the option to rescind up to 1 percent of payments due a state under any program administered by HHS until it is resolved. These existing authorities would apply to the proposed periodic data matching requirements in § 155.330(d). If HHS determines it is necessary to apply this authority due to non-compliance by an Exchange with § 155.330(d), HHS would also determine the HHS-administered program from which it will rescind payments that are due to that state.

Lastly, we propose to make a technical correction in § 155.330(d)(1) by adding an additional reference to the process and authority in § 155.320(b). This reference was omitted previously, but the requirements in § 155.320(b), specifying that Exchanges must verify whether an applicant is eligible for MEC other than through an eligible employer-sponsored plan using information obtained by transmitting identifying information specified by HHS to HHS for verification purposes, apply to the PDM process in § 155.330.

4. General Program Integrity and Oversight Requirements (§ 155.1200)

As section 1311 of the PPACA Exchange Establishment grant program has come to a conclusion and State Exchanges are financially self-sustaining, HHS has a need for strengthening the mechanisms and tools for overseeing SBE and SBE–FP ongoing compliance with federal requirements for Exchanges, including eligibility and enrollment requirements under 45 CFR part 155.

HHS approves or conditionally approves a state to establish a State Exchange (either an SBE or SBE–FP) based on an assessment of a state's attested compliance with statutory and regulatory rules. Once approved or conditionally approved, State Exchanges must meet specific program integrity and oversight requirements specified at section 1313(a) of the PPACA, §§ 155.1200 and 155.1210. These requirements provide HHS with the authority to oversee the Exchanges after their establishment. Currently, annual reporting requirements for State Exchanges at § 155.1200(b) include the annual submission of: (1) A financial statement in accordance with generally accepted accounting principles (GAAP); (2) eligibility and enrollment reports; and (3) performance monitoring data.

Additionally, under § 155.1200(c), each State Exchange is required to contract with an independent external auditing entity that follows generally accepted governmental auditing standards (GAGAS) to perform annual independent external financial and programmatic audits. State Exchanges are required to provide HHS with the results of the annual external audits, including corrective action plans to address any material weaknesses or significant deficiencies identified by the auditor. All corrective action plans are monitored by HHS until closed. Currently, the audits must address compliance with all Exchange requirements under 45 CFR part 155.

HHS designed and developed the State-based Marketplace Annual Reporting Tool (SMART) in 2014 to assist Exchanges in conducting a defined set of oversight activities. The SMART was designed to facilitate State Exchanges' reporting to HHS on how they are meeting federal program requirements and operational requirements set forth in statute, regulations, and applicable guidance that implements the statutory and regulatory requirements, including reporting compliance with Federal eligibility and enrollment program requirements under 45 CFR 155 subparts D and E. The SMART, thus, enables HHS to evaluate and monitor State Exchange progress in coming into compliance with federal requirements where needed. Since then, HHS has come to utilize the SMART, along with

[4] For example, see Urban Institute and Center on Society and Health, How Are Income and Wealth Linked to Health and Longevity? (April 2015), available at *https://www.urban.org/sites/default/files/publication/49116/2000178-How-are-Income-and-Wealth-Linked-to-Health-and-Longevity.pdf.*

the annual programmatic and financial audit reports, as primary oversight tools for identifying and addressing State Exchange non-compliance issues. HHS requires State Exchanges to take corrective actions to address issues that are identified through the SMART and annual programmatic and financial audits, and HHS monitors the implementation of the corrective actions. We propose to modify § 155.1200(b)(2) to reflect that HHS requires State Exchanges to submit annual compliance reports (such as the SMART), that encompass eligibility and enrollment reporting, but also include reporting on compliance across other Exchange program requirements under 45 CFR part 155. We also propose to modify § 155.1200(b)(1) to eliminate the April 1st date in which states must provide a financial statement to HHS, to provide HHS the flexibility to align the financial statement deadline with the SMART deadline, which is set annually by HHS. Because we are proposing to remove the April 1st date, but intend to maintain the requirement that State Exchanges submit the required reports by a deadline, we also propose to modify the introductory text to § 155.1200(b) to specify that State Exchanges must provide the required annual reporting by deadlines to be set by HHS.

We propose to retain the requirement at § 155.1200(c) that an annual programmatic audit be conducted by SBEs and SBE–FPs, but make a minor change from ''state'' to ''State Exchanges'' to be consistent and clear on the entities to which this rule applies. We also propose to add specificity to the annual programmatic audit requirement by proposing a clarification of § 155.1200(d)(2) to make clear that HHS may specify or target the scope of a programmatic audit to address compliance with particular Exchange program areas or requirements. This would provide HHS with the ability to specify those Exchange functions that are most pertinent to a particular State Exchange model (SBE or SBE–FP) and need to be regularly included in the audit; target those Exchange functions most likely to impact program integrity, such as eligibility verifications; and reduce burden on State Exchanges where possible. In addition, we propose to modify § 155.1200(d) by replacing existing paragraph (d)(4) with new paragraphs (d)(4) and (5). These requirements specify that SBEs must ensure that the independent audits implement testing procedures or other auditing procedures that assess whether an SBE is conducting accurate eligibility determinations and enrollment transactions under 45 CFR 155 subparts D and E. Such auditing procedures include the use of statistically valid sampling methods in the testing or auditing procedures.

We believe these proposed changes will strengthen our programmatic oversight and the program integrity of State Exchanges, while providing flexibility for HHS in the collection of information. Through the Paperwork Reduction Act (PRA) process, we are able to make updates and refinements to the SMART reporting tool to align with our oversight and program integrity priorities for Exchanges as they evolve. In addition, allowing HHS to specify the scope of the programmatic audit at § 155.1200(d)(2) would provide us the ability to target our oversight to specific Exchange program requirements based on the particular State Exchange model, our program integrity priorities, and the goal of reducing burden on State Exchanges where possible. For instance, this would allow the audits to focus on SBE compliance with Exchange eligibility and enrollment requirements in 45 CFR 155 subparts D and E, and SBE–FP compliance with Exchange requirements in 45 CFR 155 subpart C. We believe this approach will provide HHS and states with greater insight into SBE and SBE–FP compliance with federal standards in a more cost-effective manner. We believe these two tools, state reporting and independent testing, coupled with our ongoing oversight activities would strengthen program integrity in State Exchanges.

We believe this approach would allow HHS to identify State Exchange non-compliance issues with more precision and efficacy. It would also allow HHS to provide more effective, targeted technical assistance to State Exchanges in developing corrective action plans to address issues that are identified, thus mitigating the need for more drastic or severe enforcement actions against a State Exchange. We believe this approach can reduce administrative burden on State Exchanges while maintaining the traditional role of State Exchanges in managing and operating their Exchanges, with HHS maintaining its role of overseeing State Exchange compliance with federal requirements through structured reporting processes. We seek comment on these proposals.

### *B. Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges*

#### Segregation of Funds for Abortion Services (§ 156.280)

Since 1976, the Congress has included language, commonly known as the Hyde Amendment, in the Labor, Health and Human Services, Education and Related Agencies appropriations legislation.[5] The Hyde Amendment as currently in effect permits federal funds to be used for abortion services only in the limited cases of rape, incest, or if a woman suffers from a life-threatening physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Hyde abortion coverage). The Hyde Amendment prohibits the use of federal funds for abortion coverage in instances beyond those limited circumstances (non-Hyde abortion coverage). Consistent with the Hyde Amendment, section 1303(b)(2) of the PPACA prohibits the issuer of a QHP that includes non-Hyde abortion coverage from using any amount attributable to PTC (including APTC) or CSRs (including advance payments of those funds to the issuer, if any) for abortions for which federal funds appropriated for HHS are prohibited, ''based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.'' [6]

Section 1303 of the PPACA outlines specific accounting and notice requirements that QHPs covering non-Hyde abortion services on the Exchanges must follow to ensure that no federal funding is used to pay for those services. Under section 1303(b)(2)(B) of the PPACA, as implemented in § 156.280(e)(2)(i), QHP issuers must collect a ''separate payment,'' from each enrollee in a plan ''without regard to the enrollee's age, sex, or family status,'' for an amount equal to the greater of the actuarial value of the coverage for abortions for which public funding is prohibited or $1 per enrollee per month. Section 1303(b)(2)(D) of the PPACA, implemented in § 156.280(e)(4), provides that the estimation is to be determined on an average actuarial basis and that QHP issuers may take into account the impact on overall costs of the inclusion of such coverage, but may

[5] Accordingly, the Hyde Amendment is not permanent Federal law, but applies only to the extent reenacted by Congress from time to time in appropriations legislation.

[6] Section 1303(b)(1)(B)(I) of the PPACA.

not take into account any cost reduction estimated to result from such services, including prenatal care, delivery, or postnatal care. Section 1303(b)(2)(D) of the PPACA as implemented in § 156.280(e)(4) further states that QHP issuers are to estimate these costs as if the coverage were included for the entire population covered. With respect to the ''separate payment'' requirement, if an enrollee's premium for coverage under the plan is paid through employee payroll deposit (or deduction) under section 1303(b)(2)(B), the separate payments ''shall each be paid by a separate deposit.''

As mentioned above, QHP issuers that offer coverage for non-Hyde abortion may not use APTC to pay for such coverage, or use CSR funds to pay for such services. Pursuant to section 1303(b)(2)(D)(ii)(III) of the PPACA, these QHP issuers may not estimate the premium attributable to the benefit to be less than $1 per enrollee per month, regardless of the actual cost of the benefit. Currently, in certain rare scenarios, the FFE system allocates an amount of APTC to a policy such that the share of the aggregate premium for which the consumer is responsible is too low to meet this minimum standard. We intend to make system changes for open enrollment for plan year 2019 to ensure that the minimum premium amount of $1 per enrollee per month is assigned to all enrollments into plans offering coverage of non-Hyde abortion, so that issuers may separately collect this amount directly from consumers for the portion of the total premium attributable to coverage of non-Hyde abortion services.

Under section 1303(b)(3)(A) of the PPACA as implemented in § 156.280(f), QHP issuers must provide notice to enrollees as part of the Summary of Benefits and Coverage (SBC) at the time of enrollment if non-Hyde abortion services are covered by the QHP. As required under § 155.205(b)(1)(ii), each Exchange must maintain an up-to-date website that provides the SBCs. Section 147.200(a)(4) requires that individual market QHP issuers that provide the SBC electronically must place it in a prominent and readily accessible location on the QHP issuer's internet website. Additionally, pursuant to section 1303(b)(2)(C) of the PPACA, as implemented at § 156.280(e)(3), QHP issuers must segregate funds for non-Hyde abortion services collected from consumers into a separate allocation account that is to be used exclusively to pay for non-Hyde abortion services. Thus, if a QHP issuer disburses funds for a non-Hyde abortion on behalf of a consumer, it must draw those funds from the segregated allocation account. The account cannot be used for any other purpose.

Section 1303 of the PPACA and regulations at § 156.280 do not specify the method a QHP issuer must use to comply with the separate payment requirement under section 1303(b)(2)(B)(i) of the PPACA and § 156.280(e)(2)(i). In the 2016 Payment Notice, we provided guidance with respect to acceptable methods that a QHP issuer offering non-Hyde abortion coverage on the individual market Exchange may use to comply with the separate payment requirement. We stated that the QHP issuer could satisfy the separate payment requirement in one of several ways, including by sending the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-Hyde abortion services; sending the enrollee a separate monthly bill for these services; or sending the enrollee a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge. In the 2016 Payment Notice, we also stated that a consumer may make the payment for non-Hyde abortion services and the separate payment for all other services in a single transaction. On October 6, 2017, we released a bulletin that discussed the statutory requirements for separate payment, as well as this previous guidance with respect to the separate payment requirement.[7]

HHS now believes that some of the methods for billing and collection of the separate payment for non-Hyde abortion services noted as permissible in the preamble to the 2016 Payment Notice do not adequately reflect what we see as Congressional intent that the QHP issuer bill separately for two distinct (that is, ''separate'') payments, one for the non-Hyde abortion services, and one for all other services covered under the policy, rather than simply itemizing these two components of a single total billed amount or notifying the enrollee, at or soon after the time of enrollment, that the monthly invoice or bill will include a separate charge for these services. Although we recognize that itemizing or providing advance notice about the amounts arguably identifies two ''separate'' amounts for two separate purposes, we believe that the statute contemplates issuers billing for two separate ''payments'' of these two amounts (for example, two different checks or two distinct transactions), consistent with the requirement on issuers in section 1303(b)(2)(B)(i) of the PPACA to collect two separate payments. HHS, thus, believes that requiring QHP issuers to separately bill the portion of the consumer's premium attributable to non-Hyde abortion services and instruct consumers to make a separate payment for this amount is a better implementation of the statutory requirement for issuers to collect a separate payment for these services.

As such, we are proposing an amendment at § 156.280(e)(2) relating to billing and payment of the consumer's portion of the premium attributable to non-Hyde abortion services to reflect this interpretation of the statute. Specifically, we are proposing that, if these policies are finalized, as of the effective date of the final rule, QHP issuers (1) send an entirely separate monthly bill to the policy subscriber for only the portion of premium attributable to non-Hyde abortion coverage, and (2) instruct the policy subscriber to pay the portion of their premium attributable to non-Hyde abortion coverage in a separate transaction from any payment the policy subscriber makes for the portion of their premium not attributable to non-Hyde abortion coverage. We believe that these proposals would better align the regulatory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA. If these proposals are finalized, QHP issuers would no longer be permitted to send the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-Hyde abortion services, or send the enrollee a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge in order to meet the separate payment requirement. Instead, QHP issuers would have to send a separate bill and instruct enrollees to send a separate payment in the manner specified by the final rule.[8] We invite comment on these proposals.

To better align the regulatory requirements for issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA, our proposal would require

[7] CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act (October 6, 2017), *available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf.*

[8] We noted above the situation where, as a result of APTCs, the out-of-pocket premium payable by the consumer is less than $1 per enrollee per month. Under this proposed rule, and to ensure compliance with section 1303, if the QHP includes non-Hyde abortion coverage, the QHP issuer would be required to bill the consumer at least $1 per enrollee per month.

the QHP issuer to send this separate bill in a separate mailing with separate postage. If a QHP issuer sends bills electronically, we propose that it provide consumers with the two bills in separate emails or other electronic communications. We believe this approach will help reduce consumer confusion about receiving two separate bills in a single envelope. For example, consumers may inadvertently miss or discard a second paper bill included in a single envelope, increasing terminations of coverage for failure to pay premiums. The QHP issuer would also be required to produce an invoice or bill that is distinctly separate from the invoice or bill for the other portion of the consumer's premium that is not attributable to non-Hyde abortion coverage, whether in paper or electronic format. We solicit comment on any operational issues that may arise from this aspect of the proposed rule.

We also seek comment on ways to mitigate any possible confusion, for example through an annual notice or standard explanatory language on each of the two monthly bills. To meet the requirements of this new proposal, QHP issuers would be required to instruct policy subscribers to pay the separately billed or invoiced portion of the premium for non-Hyde abortion coverage in a transaction separate from the transaction for payment of the other portion of the premium that is not attributable to non-Hyde abortion coverage and make reasonable efforts to collect the payment separately, such as by including a separate payment stub on each of the separately mailed bills or invoices (if sent on paper) or providing a separate payment link in the separate email or electronic communication with a separate payment field on the payment web page for each separate payment to be collected (if sending an electronic bill, or accepting electronic payments regardless of how the bills were transmitted). Under this proposal, consumer non-payment of any premium due (including non-payment of the portion of the consumer's premium attributable to non-Hyde abortion coverage) would continue to be subject to state and federal rules regarding grace periods. In the event that a policy subscriber does not follow the separate payment instructions, however, and pays the entire premium in a single transaction (both the portion attributable to non-Hyde abortion coverage, as well as the portion attributable to coverage for other services), the QHP issuer would not be permitted to refuse to accept such a combined payment on the basis that the policy subscriber did not send two checks as requested by the QHP issuer, and to then terminate the policy, subject to any applicable grace period, for non-payment of premiums. We believe that potential loss of coverage would be an unreasonable result of a consumer paying in full but failing to adhere to the QHP issuer's requested payment procedure. Under our new interpretation, a QHP issuer would thus be required to accept a combined payment, to the extent necessary to avoid this result.

QHP issuers that do receive combined consumer premiums covering the portion attributable to non-Hyde abortion coverage as well as the portion attributable to coverage for other services in one single payment would treat the portion of the premium attributable to non-Hyde abortion services as a separate payment for which the QHP issuer would be expected to disaggregate into the separate allocation account used solely for these services. We would expect the QHP issuer in this scenario to again explain to the consumer the separate payment requirement in the law, and take steps to inform the consumer not complying with this policy that he or she should do so in future months, including documentation of such outreach and educational efforts. Again, if the consumer still declines to do so, however, the combined payment must be accepted to avoid a loss of coverage. Likewise, QHP issuers would not be permitted to refuse to accept separate premium payments paid to the issuer in a single return envelope (for example, two separate checks returned to the issuer in a single return envelope) on the basis that the consumer did not separately return each premium payment in a separate mailing. We seek comment on these proposals.

We are also proposing a technical change, to Section 156.280(e)(2)(iii) as redesignated, to insert appropriate cross reference to the explanation of the separate payments.

Consistent with § 156.715, HHS has broad authority to perform compliance reviews to monitor FFE issuer compliance. HHS conducts compliance reviews throughout the year, and issuer notification of selection for a review may occur at any time during the year. Detailed examples of regulatory and operational areas that will be reviewed are included in the *Key Priorities for FFM Compliance Review,* which is updated each year with new key oversight priorities.[9] Consistent with this authority, we propose updating our compliance reviews governing QHP certification to include new reviews of FFE issuer compliance with § 156.280, including the segregation of funds requirement and the new proposals for separate billing of the portion of the consumer's premium attributable to coverage of non-Hyde abortion services as specified in this rule. FFE issuers subject to these compliance reviews should maintain all documents and records of compliance with section 1303 of the PPACA and these requirements in accordance with § 156.705, and should anticipate making available to HHS the types of records specified at § 156.715(b) that would be necessary to establish their compliance with these requirements. For example, FFE issuers subject to compliance reviews for § 156.280 should anticipate supplying HHS with documentation of their estimate of the basic per enrollee per month cost, determined on an average actuarial basis, for coverage of non-Hyde abortion services; detailed invoice and billing records demonstrating they are separately billing in a separate mailing or separate electronic communication and collecting the portion of the premium attributable to coverage of non-Hyde abortion services as specified in this rule; and appropriately segregating the funds collected from consumers into a separate allocation account that is used exclusively to pay for non-Hyde abortion services. We believe the addition of these compliance reviews will help to address remaining issuer compliance issues, if any, previously identified by the 2014 U.S. Government Accountability Office report.[10] We seek comment on this proposal.

As is the case with many provisions in the PPACA, states are the entities primarily responsible for implementing and enforcing the provisions in section 1303 of the PPACA related to individual market QHP coverage of non-Hyde abortion services. Section 1303(b)(2)(E)(i) of the PPACA, as implemented at § 156.280(e)(5), designates the state insurance commissioners as the entities responsible for monitoring, overseeing, and enforcing the provisions in section 1303 of the PPACA related to QHP segregation of funds for non-Hyde abortion services. However, as stated in

[9] CCIIO Examinations, Audits and Reviews of Issuers: Issuer Resources, *available at https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Exams_Audits_Reviews_Issuer_Resources-.html.*

[10] U.S. Government Accountability Office, ''Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans,'' (Sept. 15, 2014), available at *http://www.gao.gov/products/GAO-14-742R.*

2017 guidance,[11] where we are charged with directly enforcing these statutory requirements in the FFEs, we intend to do so fully in instances of issuer non-compliance. We call upon states that operate their own Exchanges to fully enforce these requirements as codified in the federal regulations governing the Exchanges. To the extent such a state operating its own Exchange fails to substantially enforce these requirements, HHS would expect to enforce them in the state's place. However, as states remain the primary enforcers of these requirements, we propose that HHS involvement in enforcement would be limited to ensuring that federal funds are appropriately managed. For example, HHS enforcement would be limited to instances where it becomes clear that the state department of insurance is not overseeing the requirement for the QHP issuer to determine the actuarial value of the coverage of non-Hyde abortions, to separately bill (and collect) premium of at least $1 per enrollee per month for such coverage, or to segregate funds effectively; a state department of insurance or other entity notifies HHS of suspected misuse of federal funding for coverage of non-Hyde abortion services; or the state's enforcement actions are inadequate and fail to result in compliance from the QHP issuer. The Office of Personnel Management may issue guidance related to these provisions for multi-state plan issuers.[12]

We remind issuers that pursuant to § 156.280(e)(5)(ii), any issuer offering coverage of non-Hyde abortions services on the Exchange must submit a plan to its state department of insurance that details the issuer's process and methodology for meeting the requirements of section 1303(b)(2)(C), (D), and (E) of the PPACA (hereinafter, ''separation plan'') to the state health insurance commissioner. The separation plan should describe the QHP issuer's financial accounting systems, including appropriate accounting documentation and internal controls, that would ensure the segregation of funds required by section 1303(b)(2)(C), (D), and (E) of the PPACA. Issuers should refer to § 156.280(e)(5)(ii) for more information on precisely what issuers should include in their separation plans to demonstrate compliance with these requirements.

As mentioned previously, consistent with HHS's authority under § 156.715, we propose monitoring FFE issuer compliance with the requirements under § 156.280 by requiring QHP issuers in FFEs to show documentation of compliance with the requirement to estimate the basic per enrollee per month cost, determined on an average actuarial basis, for coverage of non-Hyde abortion services and charge at least $1 per enrollee per month for such coverage, as well as with the segregation of funds requirements when undergoing compliance reviews, including detailed records and documentation demonstrating compliance with the separate billing (including mailing, as applicable) and collection requirements proposed in this rule, as well as the segregation of funds requirements. We also remind issuers offering medical QHPs in the FFEs that they must already attest to adhering to all applicable requirements of 45 CFR part 156 as part of the QHP certification application, including those requirements related to the segregation of funds for abortion services implemented in § 156.280.[13] If the separate billing and premium collection proposals at § 156.280(e)(2) are finalized as proposed, issuers in the FFE completing this attestation would also attest to adhering to these new separate billing and collection requirements. As part of the QHP certification process, issuers in states with FFEs where the States perform plan management functions must also complete similar program attestations attesting to adherence with § 156.280.[14] Issuers in states with SBEs that offer QHPs including non-Hyde abortion coverage should contact their state for attestation requirements as part of the QHP certification process.

We seek comment on these proposals.

## IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain ICRs:

### *A. ICRs Regarding General Program Integrity and Oversight Requirements (§ 155.1200)*

The burden associated with State Exchanges meeting the proposed program integrity reporting requirements in § 155.1200 have already been assessed and encompassed through SMART currently approved under OMB control number: 0938–1244 (CMS–10507). This proposed rule does not impose any new burden or add any additional requirements to the existing collection.

### *B. ICRs Regarding Segregation of Funds for Abortion Services (§ 156.280)*

In the preamble to § 156.280, we explain that the proposals to require separate issuer billing for, and collection of, the portion of the premium attributable to non-Hyde abortion coverage would be subject to future HHS compliance reviews of FFE issuers, requiring issuers in the FFE to maintain and submit records showing compliance with these requirements to HHS. We have determined that the requirements associated with compliance reviews have already been assessed and encompassed by the Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II ICR currently approved under OMB control number: 0938–1277 (CMS–10516).

To show compliance with FFE standards and program requirements, all

[11] CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act (October 6, 2017), *available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf.*

[12] Section 1334(a)(6) of the PPACA requires that at least one multi-state plan in each Exchange excludes coverage of non-Hyde abortion services. Currently, no multi-state plan options cover non-Hyde abortion services. *See* OPM's Frequently Asked Questions: Insurance, *available at https://www.opm.gov/faqs/QA.aspx?fid=fd635746-de0a-4dd7-997d-b5706a0fd8d2&pid=8313a65b-c5b8-4d58-a58f-9d81f26856a2.*

[13] 2019 Qualified Health Plan Issuer Application Instructions, *available at: https://www.qhpcertification.cms.gov/s/2019QHPInstructionsVersion1.pdf?v=1.*

[14] State Partnership Exchange Issuer Program Attestation Response Form, *available at: https://www.qhpcertification.cms.gov/s/SuppDoc_SPE_Attestationsed._revised_508.pdf?v=1.*

issuers seeking QHP certification in FFE states are required to submit responses to program attestations as part of their QHP application. This response already includes an attestation that the issuer agrees to adhere to the requirements related to the segregation of funds for abortion services implemented in § 156.280. We have determined that the requirements associated with QHP certification have already been assessed and encompassed by the Establishment of Exchanges and Qualified Health Plans; Exchange Standard for Employers approved under OMB control number 0938–1187 (CMS–10433). Therefore, proposed § 156.280(e)(2) adds no new ICRs as it relates to program attestations.

In § 156.280(e)(2), we propose that QHP issuers must send an entirely separate monthly bill in a separate mailing or separate electronic communication to the policy subscriber for only the portion of premium attributable to non-Hyde abortion coverage, and instruct the policy subscriber to pay the portion of their premium attributable to non-Hyde abortion coverage in a separate transaction from any payment the policy subscriber makes for the portion of their premium not attributable to non-Hyde abortion coverage. Based on 2018 QHP certification data in the FFEs and SBE–FPs, we estimate that 15 QHP issuers offered a total of 111 plans with coverage of non-Hyde abortion services in 7 States. In SBEs, we estimate that 60 QHP issuers offered a total of approximately 1,000 plans offering this coverage across 10 SBEs. In total, this leads to an estimated 75 QHP issuers offering a total of 1,111 plans covering non-Hyde abortion services across 17 states. As such, the ICRs associated with these proposals would create a new burden on QHP issuers and plans and are subject to the Paperwork Reduction Act. Salaries for the positions cited below were taken from the May 2017 National Occupational Employment and Wage Estimates United States Department of Labor's Bureau of Labor Statistics (BLS) (*http://www.bls.gov/oes/current/oes_nat.htm*) based on the listed national median hourly wage. All wages on the following pages are inflated by 100 percent to account for the cost of fringe benefits and overhead costs.

We anticipate that populating the enrollee information on the separate electronic or paper bill, transmitting the separate electronic or paper bill in a separate mailing or separate electronic communication, and processing the enrollee's separate electronic or mailed payment, will be an automated process that occurs monthly after a computer programmer adds this functionality to the QHP issuer's billing and payment operating system. We estimate that, on a one-time basis, a computer programmer will require 10 hours to add this functionality to an affected QHP issuer's systems (at a rate of $84.16 per hour) for a total burden of 10 hours. We estimate that this will result in a one-time cost of $841.60 per QHP issuer that offers plans that cover non-Hyde abortion services to meet this reporting requirement. This would be a one-time cost, such that the overall burden for all 75 QHP issuers would be 750 hours, with an associated total cost of $63,120.

Because an estimated 75 QHP issuers offered a total of 1,111 plans with coverage of non-Hyde abortion services across 17 states, we estimate that the total number of QHP issuers that offer plans with coverage of non-Hyde abortion, for which they would be required to send separate bills in a separate mailing or separate electronic communication and collect separate payments as proposed at § 156.280(e)(2), would be 75 per year, for a total one-time burden of 750 hours. Below is the estimate of the burden imposed on a single QHP issuer subject to the reporting requirements of this rule. The aggregate burden for 3 years will be same as for 1 year: $841.60 per respondent and $63,120 for all respondents.

| Labor category | Respondents | Responses | Burden per response (hours) | Wage rate (p/hr) including 100% fringe benefits | Total annual burden per response (hours) | Labor cost of one-time reporting ($) | Total one-time cost for all respondents ($) |
|---|---|---|---|---|---|---|---|
| Computer programmer to add automated billing & payment processing functionality ... | 75 | 75 | 10 | $42.08 | 10 | $841.60 | $63,120 |
| Total ..... | 75 | 75 | 10 | 42.08 | 10 | 841.60 | 63,120 |

Although we anticipate that populating the enrollee information on the separate electronic or paper bill and transmitting that bill in a separate mailing or separate electronic communication would be an automated process, we estimate that a general office clerk working for an affected QHP issuer would require 2 hours monthly (at a rate of $30.28 per hour) per plan to determine which enrollees are enrolled in plans that cover non-Hyde abortion and to oversee the process of sending a separately packaged complete and accurate bill in a separate mailing or separate electronic communication to these enrollees for the portion of their premium attributable to that coverage, for an annual burden of 24 hours. This estimate includes the amount of time the office clerk would spend determining which enrollees prefer paper billing versus electronic billing, and ensuring that the bills are complete and accurate and are being sent in a separate mailing or separate electronic communication. We estimate that it would cost $726.72 annually per plan that covers non-Hyde abortion services to meet the reporting requirement, with a total annual burden for all 1,111 plans of 26,664 hours and an associated total annual cost of $807,385.92.

We similarly anticipate that processing the payment made by enrollees for this portion of their premium would be an automated process. However, we estimate that a general office clerk working for an affected QHP issuer would require 2 hours monthly (at a rate of $30.28 per hour) per plan to review for accuracy the separate payment an enrollee in a plan covering non-Hyde abortion services sends for the portion of their premium attributable to that coverage and to process any payments or paper checks made by enrollees through the mail, for an annual burden of 24 hours. This estimate includes the amount of additional time the office clerk would need to spend reviewing for accuracy the separate payments returned in separate mailings from the payments received for the portion of the policy subscriber's premium not attributable to non-Hyde abortion. We estimate that it would cost $726.72 annually per plan that covers non-Hyde abortion services to meet the reporting requirement, with a total annual burden for all 1,111 plans

of 26,664 hours and an associated total cost of $807,385.92.

As such, we estimate that the total number of plans for which QHP issuers would need to send separate bills in a separate mailing or separate electronic communication and collect separate payments as proposed at § 156.280(e)(2) would be 1,111 per year, for a total burden of 53,328 hours to meet these reporting requirements per year. Below is the estimate of the burden imposed on a single plan subject to the reporting requirements of this rule. The aggregate burden for 3 years will be $4,360.32 per respondent and $4,844,315.52 for all respondents.

| Labor category | Respondents | Responses | Burden per response (hours) | Total annual burden per response (hours) | Wage rate (p/hr) including 100% fringe benefits | Labor cost of reporting annually ($) | Total annual cost for all respondents ($) |
|---|---|---|---|---|---|---|---|
| General office clerk for preparing and sending the bill | 1,111 | 1,111 | 2 | 24 | $30.28 | $726.72 | $807,385.92 |
| General office clerk for receiving and processing the separate payment | 1,111 | 1,111 | 2 | 24 | 30.28 | 726.72 | 807,385.92 |
| Total | 2,222 | 2,222 | 4 | 48 | 60.56 | 1,453.44 | 1,614,771.84 |

*C. Submission of PRA-Related Comments*

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

We invite public comments on these information collection requirements. If you wish to comment, please identify the rule (CMS–9922–P) and, where applicable, the ICR's CFR citation, CMS ID number, and OMB control number.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS's website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

See this rule's **DATES** and **ADDRESSES** sections for the comment due date and for additional instructions.

## V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a regulation: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and an ''economically significant'' regulatory action is subject to review by the Office of Management and Budget (OMB). As discussed below regarding their anticipated effects, these proposals are not likely to have economic impacts of $100 million or more in any 1 year, and therefore do not meet the definition of ''economically significant'' under Executive Order 12866. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, OMB has reviewed these final rules and the Departments have provided the following assessment of their impact.

*A. Need for Regulatory Action*

HHS is committed to promoting program integrity throughout its programs to ensure that federal statutory requirements are met and federal monies are not being inappropriately spent. Ensuring that consumers receive the correct amount of APTC and CSRs at the time of enrollment or re-enrollment is a top priority for us, and necessitates regulatory action. Accurate and up-to-date eligibility determinations help reduce the possibility that an individual or family is paying a premium amount that is either higher or lower than they should have to, the latter of which could result in the individual or family needing to pay a large amount back to the federal

Treasury on their federal income tax returns. We propose a number of changes in this rule to help mitigate the risk of federal dollars incorrectly leaving the federal Treasury in the form of APTC during the year. To further improve program integrity and ensure that individuals receiving APTC/CSRs are appropriately enrolled in insurance affordability programs, we are also proposing to specify that Exchanges must conduct Medicare PDM, Medicaid/CHIP PDM, and BHP PDM, if applicable, pursuant to § 155.330(d)(1)(ii), at least twice a year beginning with the 2020 calendar year. We also believe this policy would likely reduce QHP premiums and improve program integrity for all Exchanges, since Medicare and Medicaid/CHIP beneficiaries tend to have a higher risk profile than a typical Exchange enrollee and, therefore, may have negative impacts on the risk pool because of the typically increased utilization of services expected for these populations, which include significant numbers of older and disabled beneficiaries or poorer health outcomes associated with lower income statuses.[15] As noted above, this negative effect on the risk pool results in higher premiums across the individual market, leading to increased expenditures of federal funds on PTC for taxpayers eligible for PTC resulting from duplicative coverage.

As part of our efforts to strengthen program integrity with respect to subsidy payments in the individual market, we also believe improvements should be made to our ability to conduct effective and efficient oversight of State Exchanges to ensure consumers receive the correct amount of APTC and CSRs (as applicable). As section 1311 of the PPACA Exchange Establishment grant program has come to a conclusion and State Exchanges are financially self-sustaining, HHS has a need to strengthen the mechanisms and tools for overseeing ongoing compliance by State Exchanges with federal program requirements, including eligibility and enrollment requirements under 45 CFR part 155. For these reasons, we are proposing to add specificity to the reporting requirements for State Exchanges at § 155.1200 to focus on activities that speak to compliance with Exchange program requirements, including eligibility and enrollment requirements. We are also proposing changes at § 155.1200 to clarify the scope of annual programmatic audits that State Exchanges are required to conduct, and include new requirements that focus on ensuring proper eligibility determinations and enrollments in SBEs. It is our intent that these changes would enable us to better identify and address State Exchange non-compliance issues.

HHS believes that some of the methods for billing and collection of the separate payment for non-Hyde abortion services noted as permissible in the preamble to the 2016 Payment Notice do not adequately reflect what we see as Congressional intent that the QHP issuer bill separately for two distinct (that is, ''separate'') payments as required by section 1303 of the PPACA. To remedy this, we are proposing at § 156.280(e)(2) that: (1) QHP issuers send an entirely separate monthly bill to the policy subscriber for only the portion of premium attributable to non-Hyde abortion coverage, and (2) instruct the policy subscriber to pay the portion of their premium attributable to non-Hyde abortion coverage in a separate transaction from any payment the policy subscriber makes for the portion of their premium not attributable to non-Hyde abortion coverage. We believe that these proposals are necessary to better align the regulatory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA. HHS believes that requiring QHP issuers to separately bill the portion of the policy subscriber's premium attributable to non-Hyde abortion services and instruct policy subscribers to make a separate payment for this amount is a better interpretation of, and would result in greater compliance with this interpretation of, the statutory requirement for QHP issuers to collect a separate payment for these services.

*B. Anticipated Effects*

Revising § 155.200(c) to clarify that the Exchanges must perform oversight functions or cooperate with activities related to oversight and financial integrity requirements is a clarification and not a new function. Therefore, it would not impose additional burdens on State Exchanges.

Our proposal that Exchanges conduct Medicare PDM, Medicaid/CHIP PDM, and BHP PDM, if applicable, at least twice a year beginning with the 2020 calendar year, merely adds specificity to the existing requirement that Exchanges must periodically examine available data sources to determine whether Exchange enrollees have been determined eligible for or enrolled in other qualifying coverage such as Medicare, Medicaid, CHIP, or the BHP, if applicable. Therefore, we expect the costs associated with this proposal to be minimal. However, SBEs that are not already conducting PDM with the frequency proposed, or deemed in compliance with the Medicaid, CHIP, and BHP (where applicable) PDM requirements, would likely be required to engage in IT system development activity in order to communicate with these programs and act on enrollment data either in a new way, or in the same way more frequently. Thus, there may be additional associated administrative cost for these SBEs to implement the proposed PDM requirements. We anticipate a majority (about eight) of the twelve SBEs would be exempt from the requirement to perform Medicaid, CHIP, and BHP (where applicable) PDM because they have shared, integrated eligibility systems, as they would be deemed in compliance with this requirement. However, at this point we are not able to confirm the exact number because we have not yet set specific criteria and process to assess and confirm which SBEs would be exempt, and would need additional operational information from SBEs to confirm our assessment. We would establish and engage in that process after finalization of the rule. For an SBE not already conducting Medicare, Medicaid/CHIP, and BHP PDM at least twice a year, and that does not already have a shared, integrated eligibility system with its respective Medicaid/CHIP, and BHP (where applicable) programs, we estimate that it would cost approximately $1,740,000 per SBE to build such capabilities in their system. These costs would be incurred by the SBE as they are required to be financially self-sustaining and do not receive federal funding for their establishment or operational activities.

We believe these changes will support HHS's program integrity efforts regarding the Exchanges by helping promote a balanced risk pool for the individual market as Medicare and Medicaid/CHIP beneficiaries tend to be higher utilizers of medical services, ensuring that consumers are accurately determined eligible for APTC and income-based CSRs, and safeguarding consumers against enrollment in unnecessary or duplicative coverage. Such unnecessary or duplicative coverage, coupled with typically higher utilization, generally results in higher premiums across the individual market, leading to unnecessarily inflated expenditures of federal funds on PTC for taxpayers eligible for PTC in the individual market.

[15] For example, see Urban Institute and Center on Society and Health, How Are Income and Wealth Linked to Health and Longevity? (April 2015), available at *https://www.urban.org/sites/default/files/publication/49116/2000178-How-are-Income-and-Wealth-Linked-to-Health-and-Longevity.pdf.*

We expect our plan to permit HHS to verify applicant eligibility for or enrollment in MEC in order for HHS to perform the periodic checks required under § 155.330(d) for those consumers who provide consent to the Exchange to obtain their eligibility and enrollment data, and, if desired, to end their QHP coverage if found dually enrolled in other qualifying coverage, to have minimal economic impact. Based on HHS's experience, the dually enrolled unsubsidized population is significantly smaller than those receiving APTC or CSRs. This plan would help expand the scope of the population that is part of Medicare PDM, rather than adding new Exchange requirements.

We do not anticipate the proposed changes to § 155.1200 will result in any additional cost for the State Exchanges because the changes leverage an existing reporting mechanism, the annual State Based Marketplace Reporting Tool, for meeting eligibility and enrollment reporting requirements in § 155.1200(b). Additionally, State Exchanges are already required to annually contract with, and budget accordingly for, an external independent audit entity to perform an annual financial and programmatic audit as required under § 155.1200(c). We believe the proposed requirement that HHS be able to specify the scope of annual programmatic audits to focus on the program areas that are most pertinent to a State Exchange model (SBE or SBE–FP), or have the greatest program integrity implications, would allow State Exchanges to utilize the funds that they already allocate to contracting with an external independent audit entity in the most cost-effective manner.

In § 156.280, we propose to amend billing and premium collection requirements related to the separate payment requirement for abortions for which public funding is prohibited pursuant to section 1303 of the PPACA, as implemented at § 156.280. Specifically, the proposals described at § 156.280(e)(2) would require QHP issuers offering non-Hyde abortion coverage through an Exchange to send an entirely separate monthly bill in a separate mailing or separate electronic communication to the policy subscriber for only the portion of premium attributable to non-Hyde abortion coverage, and instruct the policy subscriber to pay the portion of their premium attributable to non-Hyde abortion coverage in a separate transaction from any payment the policy subscriber makes for the portions of the premium not attributable to coverage for non-Hyde abortion services. These proposals aim to better align the regulatory requirements for QHP issuer billing of premiums with the separate payment requirement in section 1303 of the PPACA.

As reflected in the associated ICRs for the proposals at § 156.280(e)(2), we recognize that QHP issuers that cover non-Hyde abortion services may experience an increase in burden if these proposals are finalized. We anticipate that QHP issuers would need to invest additional time and resources to develop a separate invoice for non-Hyde abortion services, separately mail with separate postage the bill for the portion of the premium attributable to non-Hyde abortion coverage or separately email or electronically send the separate bill, as well as additional time and resources for receipt and processing of the separate payment through a separate transaction as proposed at § 156.280(e)(2). Specifically, we anticipate QHP issuers would need to invest time and resources to oversee the process of sending in a separate mailing or separate electronic communication a complete and accurate bill to these enrollees for the portion of their premium attributable to that coverage, to review for accuracy the separate payment a policy subscriber in a QHP covering non-Hyde abortion sends for the portion of their premium attributable to that coverage, and to process separate payments, whether made electronically or by mail. We also anticipate that QHP issuers would need to add functionality to their operating systems to develop an automated process to populate the enrollee information on the separate bill, transmit the separate bill in a separate mailing or separate electronic communication, and process the separate payment.

Based on 2018 QHP certification data in FFEs and SBE–FPs, 15 QHP issuers offered a total of 111 plans with coverage of non-Hyde abortion services in 7 states. In SBEs, we estimate that 60 issuers offered a total of 1,000 QHPs offering non-Hyde abortion coverage across 10 SBEs. In total, this leads to an estimated 75 QHP issuers offering a total of 1,111 QHPs covering non-Hyde abortion services across 17 states. This rule could significantly increase the administrative burden for QHP issuers covering non-Hyde abortion services in developing, sending, and processing the separate invoices required under this proposal.

Based on 2018 QHP Certification data in FFEs and SBE–FPs, there were approximately 300,000 enrollees across the 111 QHPs covering non-Hyde abortion coverage. In SBEs, we estimate that there were approximately 1,000,000 enrollees across the approximate 1,000 QHPs offering non-Hyde abortion coverage. If finalized, these requirements would also increase burden on those 1,300,000 consumers, related to paying the portion of the premium attributable to non-Hyde abortion services through a separate paper check or electronic transaction; that burden, however, is contemplated by the specific language of section 1303 which requires a QHP issuer ''to collect from each enrollee in the plan . . . a separate payment'' for the coverage of non-Hyde abortion services. In order to develop a preliminary estimate of the consumer cost of this proposed provision, we assume that a policy subscriber reading their separately received paper or electronic bill and writing out an additional paper check or filling in the necessary information for completion of a separate electronic payment adds approximately ten minutes per month to a policy subscriber's' monthly payment process for payment of their QHP premiums, for a total of 2 hours per year. Based on the May 2017 National Occupational Employment and Wage Estimates United States Department of Labor's Bureau of Labor Statistics (BLS) (*http://www.bls.gov/oes/current/oes_nat.htm*), using the listed national mean hourly wage for the 25th percentile,[16] it would cost a policy subscriber $11.91 for an additional hour of burden, or approximately $1.98 for an additional 10 minutes of burden. As such, the 10 minute monthly estimated burden for filling out a separate check or online payment for a policy subscriber would be $1.98, and the yearly added burden for each policy subscriber would be $23.76. We note that many consumers are enrolled on the Exchange for an average of 10 months. For those enrollees, the annual consumer burden would be $19.80 for a total annual burden of $25,740,000. However, in total for all affected enrollees in QHPs covering non-Hyde abortion enrolled in plans for 12 months, we estimate that it would annually cost $30,888,000 for policy subscribers to comply with these proposals. This estimate excludes the cost of consumer learning (which may have significant upfront costs and could also continue to be resource intensive on an ongoing basis given the potential confusion of consumers in receiving multiple bills. In some cases, these may entail costs not just to consumers but

[16] The 25th percentile mean hourly wage most closely resembles the group of consumers likely to be affected by this proposal as most enrollees enrolled in QHPs on the Exchange are between 100% and 400% of the federal poverty level.

also to QHP issuers, such as in increased volume of requests for customer service assistance and follow up needed to consumers to pay their full bill). However, HHS believes that, if finalized as proposed, the proposed changes would better align the regulatory requirements for QHP issuer billing of premiums with the separate payment requirement in section 1303 of the PPACA. As such, HHS believes that this outweighs the estimated consumer burden. We solicit comments on the impact of the proposed policy at § 156.280(e)(2) and on whether other impacts should be considered or quantified.

We request comment on both our assessment of the need for the regulatory action and an explanation of how the regulatory action will meet that need, as well as our assessment of the potential costs and benefits of the regulatory action. To be sure our analysis is as accurate as possible with respect to any additional costs to states, issuers, or other entities, we encourage robust comment in this area.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule does not impose substantial direct costs on state and local governments or preempt state law. However, we believe the rule has Federalism implications.

In HHS's view, this regulation has Federalism implications due to our proposal that Exchanges conduct Medicare, Medicaid/CHIP, and, if applicable, BHP PDM at least twice a year, beginning with the 2020 calendar year. However, HHS believes that the Federalism implications are substantially mitigated because the proposed requirement sets only a minimum frequency with which Exchanges must conduct Medicare, Medicaid/CHIP, and, if applicable, BHP PDM, which is already required to be conducted periodically; SBEs would continue to have the flexibility to conduct PDM with greater frequency.

Additionally, the proposed changes to State Exchange oversight and reporting requirements in § 155.1200 have Federalism implications since those rules would require State Exchanges to submit certain reports to HHS and require them to enter into contracts with an external independent audit entity to perform audits, and incur the associated costs. However, HHS believes that the Federalism implications are substantially mitigated because the proposed changes do not impose new requirements on State Exchanges, but rather add specificity to the existing requirements.

This proposed rule is subject to the Congressional Review Act (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller General for review.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB Guidance Implementing Executive Order 13771 (April 5, 2017) defines a regulatory action as (1) a significant regulatory action as defined in section 3(f) of Executive Order 12866, or (2) a significant guidance document (for example, significant interpretive guidance) that has been reviewed by OMB under the procedures of Executive Order 12866 and that, when finalized, is expected to impose total costs greater than zero. This proposed rule, if finalized as proposed, is expected to be an E.O. 13771 regulatory action. Details on the estimated costs appear in the preceding analysis.

*C. Regulatory Review Costs*

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on similar Exchange-related CMS rules will be the number of reviewers of this proposed rule. We acknowledge this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters will review the rule in detail, and it is also possible that some reviewers will chose not to comment on the proposed rule. For these reasons, we consider the number of past commenters on similar CMS rules will be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We recognize that different types of entities may be affected by only certain provisions of this proposed rule, and therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the Bureau of Labor and Statistics (BLS) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $107.38 per hour, including overhead and fringe benefits.[17] We estimate that it would take approximately 1 hour for the staff to review the relevant portions of this proposed rule. Based on previous and similar CMS rules, we assume that 321 entities will review this proposed rule. Therefore, we estimate that the total cost of reviewing this regulation is approximately $34,469 ($107.38 × 321 reviewers).

This may underestimate the review costs, since not all reviewers may have submitted comments. In addition, stakeholders may need to do a detailed analysis in order to implement the unanticipated provisions of this rule will need additional time and personnel, which will vary depending

[17] *https://www.bls.gov/oes/current/oes_nat.htm.*

on the extent to which they are affected. To estimate an upper bound, we assume that on average 530 issuers and 50 states will spend 10 hours each, 100 other organizations will spend 5 hours each and 100 individuals will spend 1 hour each to review the rule. Under these assumptions, total time spent reviewing the rule would be 6,400 hours with an estimated cost of approximately $673,024.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

**List of Subjects**

*45 CFR Part 155*

Administrative practice and procedure, Advertising, Brokers, Conflict of interests, Consumer protection, Grants administration, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

*45 CFR Part 156*

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interests, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 155 and 156 as set forth below:

## PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 1. The authority citation for part 155 is revised to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 2. Section 155.200 is amended by revising paragraph (c) to read as follows:

**§ 155.200 Functions of an Exchange.**

* * * * *

(c) *Oversight and financial integrity.* The Exchange must perform required functions and cooperate with activities related to oversight and financial integrity requirements in accordance with section 1313 of the Affordable Care Act and as required under this part, including overseeing its Exchange programs, assisters, and other non-Exchange entities as defined in § 155.260(b)(1).

* * * * *

■ 3. Section 155.330 is amended by revising paragraph (d)(1) introductory text and adding paragraph (d)(3) to read as follows:

**§ 155.330 Eligibility redetermination during a benefit year**

* * * * *

(d) * * *

(1) *General requirement.* Subject to paragraph (d)(3) of this section, the Exchange must periodically examine available data sources described in §§ 155.315(b)(1) and 155.320(b) to identify the following changes:

* * * * *

(3) *Definition of periodically.* Beginning with the 2020 calendar year, the Exchange must perform the periodic examination of data sources described in paragraph (d)(1)(ii) of this section at least twice in a calendar year. SBEs that have implemented a fully integrated eligibility system that determines eligibility for advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP, and the BHP, if a BHP is operating in the service area of the Exchange, will be deemed in compliance with paragraphs (d)(1)(ii) and (d)(3) of this section.

* * * * *

■ 4. Section 155.1200 is amended by—

■ a. Revising paragraphs (b) introductory text, (b)(1) and (2), (c) introductory text, and (d)(2) and (3);

■ b. Redesignating (d)(4) as paragraph (d)(5);

■ c. Adding a new paragraph (d)(4); and

■ d. Revising newly redesignated paragraph (d)(5).

The revisions and addition read as follows:

**§ 155.1200 General program integrity and oversight requirements.**

* * * * *

(b) *Reporting.* The State Exchange must, at least annually, provide to HHS, in a manner specified by HHS and by applicable deadlines specified by HHS, the following data and information:

(1) A financial statement presented in accordance with GAAP,

(2) Information showing compliance with Exchange requirements under this part 155 through submission of annual reports,

* * * * *

(c) *External audits.* The State Exchange must engage an independent qualified auditing entity which follows generally accepted governmental auditing standards (GAGAS) to perform an annual independent external financial and programmatic audit and must make such information available to HHS for review. The State Exchange must:

* * * * *

(d)* * *

(2) Compliance with subparts D and E of this part 155, or other requirements under this part 155 as specified by HHS;

(3) Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions, as applicable;

(4) Compliance with eligibility and enrollment standards through sampling, testing, or other equivalent auditing procedures that demonstrate the accuracy of eligibility determinations and enrollment transactions; and

(5) Identification of errors that have resulted in incorrect eligibility determinations, as applicable.

## PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 5. The authority citation for part 156 is revised to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701.

■ 6. Section 156.280 is amended by —

■ a. Redesignating paragraph (e)(2)(ii) as (e)(2)(iii);

■ b. Adding a new paragraph (e)(2)(ii); and

■ c. Revising newly redesignated paragraph (e)(2)(iii).

The revisions and addition read as follows:

**§ 156.280 Segregation of funds for abortion services.**

* * * * *

(e) * * *

(2) * * *

(ii) Send to each policy subscriber (without regard to the policy subscriber's age, sex, or family status) in the QHP separate monthly bills for each of the amounts specified in paragraphs (e)(2)(i)(A) and (B) of this section, and

instruct the policy subscriber to pay each of these amounts through separate transactions. If the policy subscriber fails to pay each of these amounts in a separate transaction as instructed by the issuer, the issuer may not terminate the policy subscriber's coverage on this basis, provided the amount due is otherwise paid.

(iii) Deposit all such separate payments into separate allocation accounts as provided in paragraph (e)(3) of this section. In the case of an enrollee whose premium for coverage under the QHP is paid through employee payroll deposit, the separate payments required under paragraph (e)(2)(i) of this section shall each be paid by a separate deposit.

* * * * *

Dated: October 11, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 18, 2018.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2018–24504 Filed 11–7–18; 4:15 pm]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

**[AU Docket No. 17–329; DA 18–1038]**

## Auction of Cross-Service FM Translator Construction Permits; Comment Sought on Competitive Bidding Procedures for Auction 100

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed auction procedures.

**SUMMARY:** The Wireless Telecommunications and Media Bureaus (Bureaus) announce an auction of certain cross-service FM translator construction permits. This document also seeks comment on competitive bidding procedures and proposed minimum opening bids for Auction 100.

**DATES:** Comments are due on or before November 15, 2018, and reply comments are due on or before November 28, 2018.

**ADDRESSES:** Interested parties may submit comments in response to the Auction 100 Comment Public Notice by any of the following methods:

- *FCC's Website:* Federal Communications Commission's Electronic Comment Filing System (ECFS): *http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *Mail:* FCC Headquarters, 445 12th Street SW, Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For FM translator service questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Auction 100 Comment Public Notice in AU Docket No.17–329, DA 18–1038, released on October 19, 2018. The complete text of this document, including its attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The Auction 100 Comment Public Notice and related documents also are available on the internet at the Commission's website: *https://www.fcc.gov/auction/100/,* or by using the search function for AU Docket No. 17–329 on the Commission's ECFS web page at *https://www.fcc.gov/ecfs/.*

All filings in response to the Auction 100 Comment Public Notice must refer to AU Docket No. 17–329. The Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction100@fcc.gov.*

*Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.

*Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

### I. Introduction

1. On December 4, 2017, the Bureaus announced a second auction filing window for AM broadcasters seeking new cross-service FM translator station construction permits. By this Public Notice, the Bureaus seek comment on the procedures to be used for Auction 100. Auction 100 will be a closed auction: Only those entities listed in Attachment A of the Auction 100 Comment Public Notice will be eligible to participate further in Auction 100.

2. The Bureaus anticipate that the bidding for Auction 100 will commence in fiscal year 2019. The Bureaus will announce a schedule for bidding in Auction 100 by public notice, to provide applicants with sufficient time to submit upfront payments and prepare for bidding in the auction.

### II. Construction Permits in Auction 100

3. Auction 100 will resolve by competitive bidding mutually exclusive (MX) engineering proposals for construction permits for up to 13 new cross-service FM translator stations. The locations and channels of these proposed stations are identified in Attachment A of the Auction 100 Comment Public Notice. Attachment A also specifies a proposed minimum opening bid and a proposed upfront payment amount for each construction permit listed.

4. An applicant listed in Attachment A may become qualified to bid only if it complies with the additional filing, qualification, and payment requirements, and otherwise complies with applicable rules, policies, and procedures. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A of the

Auction 100 Comment Public Notice. All of the engineering proposals in each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Under the Commission's established precedent, once mutually exclusive applications are accepted for a construction permit and thus mutual exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.

5. The Commission adopted eligibility criteria for filing window opportunities in its 2015 AM Radio Revitalization rulemaking order. Chesapeake-Portsmouth Broadcasting Corporation requested a waiver of the eligibility restriction for the Auction 100 filing window opportunity. MHR License LLC filed an objection to this waiver request. The Bureaus intend to address the Chesapeake-Portsmouth waiver request by the release of the public notice establishing procedures for Auction 100.

## III. Processing of Short–Form Applications (FCC FORM 175) and Minor Corrections

### *A. Initial Review of FCC Form 175*

6. Applicants listed in Attachment A to the Auction 100 Comment Public Notice previously filed short-form applications (FCC Form 175). The Bureaus will process the Forms 175 filed by the 25 applicants listed in Attachment A to determine which are complete, and subsequently will issue a public notice identifying those that are complete and those that are incomplete or deficient because of minor defects that may be corrected. That public notice will provide instructions for applicants to make only minor corrections to their Forms 175. The public notice will include a deadline for resubmitting corrected Forms 175.

### *B. Updates to Auction Applications Outside of Filing Windows*

7. As required by 47 CFR 1.65, an applicant must maintain the accuracy and completeness of information furnished in its pending application and must notify the Commission of any substantial change that may be of decisional significance to that application. Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. See also 47 CFR 1.2105(b)(4), (c).

8. If information needs to be submitted pursuant to sections 1.65 or 1.2105 outside of the upcoming resubmission window in Auction 100, the applicant must submit a letter briefly summarizing the changes by email to *auction100@fcc.gov.* Such email must include a subject or caption referring to Auction 100 and the name of the applicant. If any information needs to be submitted during the upcoming resubmission window pursuant to sections 1.65 or 1.2105, that information must be submitted within an Auction 100 applicant's Form 175.

## IV. Bureaus Seek Comment on Procedures for Auction Applications

9. The Bureaus previously announced that section 1.2105(a)(3)'s prohibition on the filing of more than one auction application (Form 175) in an auction by entities with any of the same controlling interests would be waived for Auction 100 applicants in recognition of the specific eligibility provisions and filing procedures established by the Commission for this cross-service FM translator filing window. Thus, entities controlled by the same individual or set of individuals were permitted to file separate short-form applications for Auction 100.

10. The rule provision that was waived in the Auction 100 Filing Instructions Public Notice, section 1.2105(a)(3), was adopted in 2015 in conjunction with other rule changes. Under section 1.2105(a), as revised in 2015, each auction applicant must certify that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party, and must certify that it (or any party that controls or is controlled by it) has not entered and will not enter any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant for the auction. Also in 2015, section 1.2105(c) was extended to prohibit communication of bids or bidding strategies between any applicants for an auction, and thus is no longer limited to a communication between applicants that had applied for construction permits to serve the same area. In addition, the 2015 revisions to that rule removed a prior exception to section 1.2105(c) under which applicants that had entered into bidding-related agreements could engage in certain communications so long as each entity had disclosed the other as a party to such an agreement on its auction application, pursuant to section 1.2105(a)(2)(viii). In applying the prohibited communications rule, the Bureaus have found that, where an individual served as an officer or director for two or more applicants subject to the rule, the bids and bidding strategies of one applicant are presumptively conveyed to the other applicant. Consequently, the Bureaus determined that, absent a disclosed bidding agreement between such applicants creating an applicable exception under the prior rule, an apparent violation of section 1.2105(c) would occur. Finally, in a change related to the prohibition on joint bidding agreements and the changes to the prohibited communications rule, revised section 1.2105(a)(2)(iii) now prohibits any individual from serving as an authorized bidder of more than one applicant.

11. In recognition that some Auction 100 applicants under common control may have filed separate Forms 175 relying on the waiver of section 1.2105(a)(3), the Bureaus seek comment on whether it would be appropriate to waive or modify for Auction 100 the application of certain other provisions of section 1.2105 so that such applicants will not thereby violate such other provisions of the rule. For instance, in the absence of relief, such applicants could be at risk of violating section 1.2105(c) because the Commission presumes that bidding strategies are communicated between entities that share a common officer or director. Moreover, current rules bar most kinds of joint bidding agreements that may have, under the prior rule, permitted certain communications between commonly controlled entities or other auction applicants under the former rules.

12. Accordingly, the Bureaus seek comment on whether it would be appropriate to waive or modify the application of section 1.2105 provisions so that Auction 100 applicants relying on the waiver of section 1.2105(a)(3) will not thereby violate such other provisions. Commenters may wish to consider the Bureaus' prior observations regarding circumstances under which competitive bidding rules might be waived or modified in particular situations and should review carefully that discussion in the Auction 100 Comment Public Notice and references in that section.

## V. Bureaus Seek Comment on Bidding Procedures

13. The Bureaus, under delegated authority, seek comment on multiple

issues relating to the conduct of Auction 100.

*A. Auction Structure*

14. *Simultaneous Multiple Round Auction Design.* The Bureaus propose to use the Commission's standard simultaneous multiple-round auction format for Auction 100. This type of auction offers every construction permit for bidding at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

15. *Bidding Rounds.* Auction 100 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct Auction 100 over the internet using the FCC auction bidding system. Qualified bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

16. The Bureaus propose to retain the discretion to change the bidding schedule to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

17. *Stopping Rule.* To complete bidding in the auction within a reasonable time, the Bureaus propose to employ a simultaneous stopping rule approach for Auction 100, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bids, no bidder applies a proactive waiver, or, if bid withdrawals are permitted in this auction, no bidder withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, unless the Bureaus announce alternative procedures, under the proposed simultaneous stopping approach bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

18. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 100. (1) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit for which it is not the provisionally winning bidder, which means that, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit that already has a provisionally winning bid, which means that, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after a specified number of additional rounds (special stopping rule) to be announced by the Bureaus. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

19. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

20. *Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), the Bureaus propose that they may delay, suspend, or cancel bidding in Auction 100 in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus would notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If bidding is delayed or suspended, the Bureaus may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasized that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. The Bureaus seek comment on this proposal.

*B. Auction Procedures*

21. *Upfront Payments and Bidding Eligibility.* The Bureaus have determined an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by an applicant to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. With these considerations in mind, the Bureaus proposed the upfront payments set forth in Attachment A of the Auction 100 Comment Public Notice. The Bureaus

seek comment on the upfront payments specified in that Attachment A.

22. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureaus propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the Auction 100 Comment Public Notice. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 100, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureaus request comment on these proposals.

23. *Activity Rule.* To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100 percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level would result in the use of an activity rule waiver, if any, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

24. *Activity Rule Waivers and Reducing Eligibility.* For the proposed simultaneous multiple round auction format, the Bureaus propose that when a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility if exigent circumstances prevent it from bidding in a particular round.

25. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

26. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

27. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction would remain open and the bidder's eligibility would be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there are no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), or no proactive waiver would not keep the auction open. The Bureaus propose that each bidder in Auction 100 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

28. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. The Bureaus did not propose to establish separate reserve prices for the Auction 100 construction permits.

29. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Because it is an effective tool for accelerating the competitive bidding process, the Bureaus propose minimum opening bid amounts for Auction 100 determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. Attachment A of the Auction 100 Comment Public Notice lists a proposed minimum opening bid amount for each construction permit available in Auction 100. Consistent with 47 U.S.C. 309(j)(4)(f), the Bureaus seek comment on the minimum opening bid amounts specified in Attachment A of the Auction 100 Comment Public Notice.

30. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. The Bureaus ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors.

31. *Bid Amounts.* The Bureaus propose that, if the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, an eligible bidder will be able to place a bid on that construction permit in any of up to nine different amounts. In the event of duplicate bid amounts due to rounding, the FCC auction system will omit the duplicates and will list fewer than nine acceptable bid amounts for that construction permit. Under this proposal, the FCC auction bidding system interface will list the acceptable

bid amounts for each construction permit.

32. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10 percent, then the provisionally winning bid amount is multiplied by 10 percent. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

33. The eight additional bid amounts would be calculated using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result, rounded, is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5 percent, then the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 *(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 *(additional increment amount)); etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

34. For Auction 100, the Bureaus propose to use a minimum acceptable bid increment percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use an additional bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

35. Consistent with past practice, the Bureaus propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus propose to retain the discretion to do so on a construction-permit-by-construction-permit basis. The Bureaus also propose to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is $1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $1,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction. The Bureaus seek comment on these proposals

36. *Provisionally Winning Bids.* Provisionally winning bids are bids that would become winning bids if the auction were to close in that given round. At the end of each bidding round, the FCC auction bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids become the winning bid at the end of the auction.

37. The auction bidding system assigns a pseudo-random number to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.,* tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

38. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). As a reminder, provisionally winning bids count toward a bidder's activity level for purposes of the activity rule.

39. *Bid Removal and Bid Withdrawal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder is no longer permitted to remove a bid.

40. The Bureaus seek comment on whether bid withdrawals should be permitted in Auction 100. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become

provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

41. Based on the stand-alone nature of FM translator facilities and the Auction 100 limit of one FM translator station proposal per AM station, as well as the experience of the Bureaus with past auctions of broadcast construction permits, the Bureaus propose to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. The Bureaus made this proposal in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction, all of which suggest that potential applicants for this auction will not need to use the auction process to aggregate construction permits (as compared with bidders in many auctions of wireless licenses). Thus, the Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Also, allowing bid withdrawals may encourage insincere bidding or increase opportunities for anti-competitive bidding in certain circumstances. The Bureaus also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new cross-service FM translator stations and attendant delays in the offering of new broadcast service to the public. The Bureaus seek comment on their proposal to prohibit bid withdrawals in Auction 100.

*C. Post-Auction Payments*

42. *Interim Withdrawal Payment Percentage.* A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, in accordance with 47 CFR 1.2104(g)(1) the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

43. Pursuant to 47 CFR 1.2104(g)(1), the amount of the interim bid withdrawal payment may range from 3 to 20 percent of the withdrawn bid amount. If the Bureaus allow bid withdrawals in Auction 100, the Bureaus propose that the interim bid withdrawal payment be 20 percent of the withdrawn bid amount. The Bureaus request comment on using 20 percent for calculating an interim bid withdrawal payment amount in Auction 100. Commenters advocating the use of bid withdrawals in Auction 100 should also address the percentage of the interim bid withdrawal payment.

44. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference between the amount of the Auction 100 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Based on the nature of the service and the construction permits being offered, the Bureaus propose for Auction 100 an additional default payment amount of 20 percent of the applicable winning bid. The Bureaus seek comment on this proposal.

**VI. Procedural Matters**

*A. Initial Paperwork Reduction Act of 1995 Analysis*

45. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. See 44 U.S.C. 3506(c)(4).

*B. Supplemental Initial Regulatory Flexibility Analysis*

46. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) as part of the 1997 Broadcast Competitive Bidding Notice of Proposed Rulemaking (NPRM) and other Commission notices (collectively, Broadcast Competitive Bidding NPRMs) pursuant to which Auction 100 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the 1998 Broadcast First Report and Order and other Commission rulemaking orders (collectively, Broadcast Competitive Bidding Orders). The Bureaus have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules addressed in the Auction 100 Comment Public Notice, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the Broadcast First Report and Order and other Commission orders pursuant to which Auction 100 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadline for comments specified on the first page of the Auction 100 Comment Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), 5 U.S.C. 603(a).

47. *Need for, and Objectives of, the Proposed Rules.* In addition to providing notice of proposed procedures in the Auction 100 Comment Public Notice, consistent with 47 U.S.C. 309(j)(3)(E)(i), the Bureaus intend to provide adequate time for participants to comment on proposed procedures to govern Auction 100, an auction of up to 13 cross-service FM translator construction permits. To promote the efficient and fair administration of the competitive bidding process for all Auction 100 participants, including small businesses, the Bureaus seek comment on the following proposed procedures: (1) Whether certain aspects of the rules governing auction applications should be waived or modified in conjunction with the Bureaus' prior decision to allow eligible AM licensees having any of the same controlling interest in common to file separate auction applications (Forms 175), rather than a single Form 175; (2) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by the Bureaus to exercise alternative stopping rules

under certain circumstances); (3) A specific minimum opening bid amount for each construction permit available in Auction 100; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a bidder is required to be active on 100 percent of its bidding eligibility in each round of the auction; (8) Provision of three activity rule waivers for each bidder to allow it to preserve bidding eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, with the Bureaus retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on a permit in a given round; (11) Bid removal procedures; (12) Whether to permit bid withdrawals; (13) Establishment of an interim bid withdrawal percentage of 20 percent of the withdrawn bid in the event the Bureaus allow bid withdrawals in Auction 100; and (14) Establishment of an additional default payment of 20 percent under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

48. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum auction under the Communications Act of 1934, as amended (the Act), are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(i). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 100. In promulgating those rules, the Commission conducted numerous Regulatory Flexibility Act analyses to consider the possible impact of competitive bidding rules on small businesses that might seek to participate in Commission auctions. The Commission has directed the Bureaus, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

49. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted, 5 U.S.C. 603(b)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small government jurisdiction, 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA, 5 U.S.C. 632.

50. The specific procedures and minimum opening bid amounts on which comment is sought in the Auction 100 Comment Public Notice will affect directly all applicants participating in Auction 100. There are a maximum of 25 individuals or entities that may become qualified bidders in Auction 100, in which applicant eligibility is closed. Therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the Auction 100 Comment Public Notice will affect only the 25 individuals or entities listed in Attachment A to that Public Notice and who are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 100. These specific 25 Auction 100 individuals or entities include firms of all sizes.

51. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

52. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of September 6, 2018, about 11,024 (or about 99.92 percent) of 11,033 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Bureaus note, however, that the SBA size standard data does not enable the Bureaus to make a meaningful estimate of the number of small entities who may participate in Auction 100.

53. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. The Bureaus' estimate therefore likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 100 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, the Bureaus are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, the Bureaus note that it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

54. The Bureaus also note that they are unable to accurately develop an estimate of how many of these 25 individuals or entities in Auction 100 are small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services). Due to specific eligibility criteria adopted in a 2015 Commission rulemaking order, potential eligible bidders in Auction 100 include existing holders of broadcast station construction permits or licenses. In 2013, the Commission estimated that 97 percent of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of $7 million. The SBA has since increased that revenue threshold to $38.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition at 13

CFR 121.201. Based on Commission staff review of BIA/Kelsey, LLC's Media Access Pro Radio Database, 4,626 (99.94%) of 4,629 a.m. radio stations have revenue of $38.5 million or less. Accordingly, based on this data, the Bureaus conclude that the majority of Auction 100 eligible bidders would likely meet the SBA's definition of a small business concern.

55. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the Auction 100 Comment Public Notice, the Bureaus propose no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

56. *Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities, 5 U.S.C. 603(c)(1)–(4).

57. The Bureaus intend that the proposals of the Auction 100 Comment Public Notice to facilitate participation in Auction 100 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed in the Auction 100 Comment Public Notice should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 100. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of telephone hotlines for assistance with auction processes and procedures as well as technical support hotlines to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation in Auction 100 by all eligible bidders and may result in significant cost savings for small business entities who utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 100, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

58. These proposed procedures for the conduct of Auction 100 constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR parts 1 and 73 and the underlying rulemaking orders, including the Broadcast First Report and Order and relevant competitive bidding orders, and are fully consistent therewith.

59. *Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules.* None.

*C. Ex Parte Rules*

60. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. While additional information is provided in the Auction 100 Comment Public Notice on the relevant reporting requirements, participants in Auction 100 should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau.*

[FR Doc. 2018–24596 Filed 11–8–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 18–320; RM–11817; DA 18–1070]**

### Television Broadcasting Services; Morehead and Richmond, Kentucky

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of ION Media Lexington License, Inc. (ION), licensee of television station WUPX–TV, channel 21, Morehead, Kentucky (WUPX), the Commission is proposing to amend the DTV Table of Allotments to change WUPX's community of license from Morehead to Richmond, Kentucky. ION asserts that the proposed reallotment is consistent with the Commission's second allotment priority by providing Richmond with its first local transmission service. ION also asserts that the proposed reallotment will not deprive Morehead of its sole broadcast station because it will continue to be served by station WKMR(TV), licensed to Kentucky Authority for Educational TV, on channel *15 at Morehead. ION is not currently proposing to change WUPX's licensed facilities as part of its proposed reallotment.

**DATES:** Comments must be filed on or before November 26, 2018 and reply comments on or before December 4, 2018.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: ION Media Networks, Inc., c/o Terri McGalliard, 601 Clearwater Park Road, West Palm Beach, Florida 33401.

**FOR FURTHER INFORMATION CONTACT:** Darren Fernandez, Media Bureau, at *Darren.Fernandez@fcc.gov;* or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of

Proposed Rulemaking, MB Docket No. 18–320; RM–11817; DA 18–1070, adopted October 18, 2018, and released October 18, 2018. Pursuant to section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554, or online at *http://apps.fcc.gov/ecfs/*. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all ex parte contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, see 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in §§ 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Barbara Kreisman,**

*Chief, Video Division, Media Bureau.*

**Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

**§ 73.622 [Amended]**

■ 2. Amend § 73.622(i), the Post-Transition Table of DTV Allotments under Kentucky, by removing in the entry for Morehead, channel 21, and adding, in alphabetical order an entry for Richmond, channel 21.

[FR Doc. 2018–24345 Filed 11–8–18; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600, 622, and 697

**[Docket No. 181009921–8921–01]**

**RIN 0648–BI46**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Amendment 31

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (Amendment 31), as prepared by the Gulf of Mexico (Gulf Council) and South Atlantic Fishery Management Councils (South Atlantic Council) (Councils). This proposed rule would remove Atlantic migratory group cobia (Atlantic cobia) from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, this proposed rule would implement comparable regulations under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to replace the existing Magnuson-Stevens Act based regulations in Atlantic Federal waters. The purpose of Amendment 31 is to facilitate improved coordination of Atlantic cobia in state and Federal waters, thereby more effectively constraining harvest and preventing overfishing and decreasing adverse socio-economic effects to fishermen.

**DATES:** Written comments must be received by December 10, 2018.

**ADDRESSES:** You may submit comments on the proposed temporary rule, identified by ''NOAA–NMFS–2018–0114,'' by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0114* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Instructions:* 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *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. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies Amendment 31 may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/coastal-migratory-pelagics-amendment-31-management-atlantic-migratory-group-cobia.* Amendment 31 includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, NMFS Southeast Regional Office, telephone: 727–551–5753, or email: *karla.gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The coastal migratory pelagics fishery in the Atlantic region is managed under the FMP and includes cobia, along with king and Spanish mackerel. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Act.

**Background**

Through the CMP FMP, cobia is managed in two distinct migratory groups. The first is the Gulf migratory group of cobia that ranges both in the Gulf from Texas through Florida as well as in the Atlantic off the east coast of Florida (Gulf cobia). The second is the Atlantic migratory group of cobia that is managed from Georgia through New

York (Atlantic cobia). The boundary between these two migratory groups is the Georgia-Florida state boundary. Both the Gulf and the Atlantic migratory groups of cobia were assessed through SEDAR 28 in 2013 and neither stock was determined to be overfished or experiencing overfishing.

The majority of Atlantic cobia landings occur in state waters and, despite closures in Federal water in recent years, recreational landings have exceeded the recreational annual catch limit (ACL) and the combined stock ACL. This has resulted in shortened fishing seasons, which have been ineffective at constraining harvest. Following overages of the recreational and combined stock ACLs in 2015 and 2016, Federal waters closures for recreational harvest occurred in both 2016 (June 20) and 2017 (January 24). Additionally, Federal waters were closed to commercial harvest of Atlantic cobia in 2016 (December 5) and 2017 (September 4), because the commercial ACL was projected to be reached during the fishing year.

Allowable harvest in state waters following the Federal closures varied by time and area. Georgia did not close state waters to recreational harvest of Atlantic cobia in 2016 or 2017. South Carolina allowed harvest in 2016 during May in the Southern Cobia Management Zone and closed state waters in 2017 when Federal waters closed. Most harvest of Atlantic cobia off Georgia and South Carolina occurs in Federal waters. Off North Carolina recreational harvest of Atlantic cobia closed on September 30, 2016; in 2017, harvest was allowed May 1 through August 31. Off Virginia in 2016, harvest was allowed until August 30, 2016, and in 2017, Virginia allowed harvest June 1 through September 15. Harvest in state waters during the Federal closures contributed to the overage of the recreational ACL and the combined stock ACL.

The South Atlantic Council requested that the Atlantic States Marine Fisheries Commission (ASMFC) consider complementary management measures for Atlantic cobia, as constraining harvest in Federal waters has not prevented the recreational and combined ACLs from being exceeded. The ASMFC consists of 15 Atlantic coastal states that manage and conserve their shared coastal fishery resources. The majority of ASMFC's fisheries decision-making occurs through the Interstate Fisheries Management Program, where species management boards determine management strategies that the states implement through fishing regulations.

In May 2016, the ASMFC started developing an interstate FMP for Atlantic cobia with the purpose of improving cobia management in the Atlantic. In April 2018, the ASFMC implemented the Interstate FMP, which established state management for Atlantic cobia. Each affected state developed an implementation plan that included regulations in their state waters. In addition, the ASMFC is currently amending the Interstate FMP for Atlantic cobia to establish a mechanism for recommending future management measures to NMFS. If Amendment 31 is implemented, such management measures would need to be implemented in Federal waters through the authority and process defined in the Atlantic Coastal Act.

The management measures contained within the ASMFC's Interstate FMP are consistent with the current Federal regulations for Atlantic cobia. For the recreational sector, the management measures in the Interstate FMP include a recreational bag and possession limit of one fish per person, not to exceed six fish per vessel per day, and a minimum size limit of 36 inches (91.4 cm), fork length. For the commercial sector, the management measures in the Interstate FMP include a commercial possession limit of two cobia per person, not to exceed six fish per vessel, and a minimum size limit of 33 inches (83.8 cm), fork length. Under the ASMFC plan, regulations in each state must match, or be more restrictive than, the Interstate FMP management measures. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive regulations for the recreational sector in their state waters than those specified in the Interstate FMP. Those regulations include recreational bag and vessel limits, and minimum size limits, in addition to allowable fishing seasons. The Interstate FMP also provides the opportunity for states to declare *de minimis* status for their Atlantic cobia recreational sector if a state's recreational landings for 2 of the previous 3 years is less than 1 percent of the coastwide recreational landings for the same time period. States in a *de minimis* status would be required to adopt the regulations (including season) of the closest adjacent non-*de minimis* state or accept a one fish per vessel per day trip limit and a minimum size limit of 29 inches (73.7 cm), fork length. Maryland, Delaware, and New Jersey have declared a *de minimis* status.

The Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that requires conservation and management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management (50 CFR 600.305(c)(1)). Beyond such stocks, councils may determine that additional stocks require conservation and management. Thus, not every fishery requires Federal management and the NMFS National Standard Guidelines at 50 CFR 600.305(c) provide factors that NMFS and the councils should consider when considering removal of a stock from a FMP. This analysis is contained in Amendment 31.

Based on this analysis, the Councils and NMFS have determined that Atlantic cobia is no longer in need of conservation and management within the South Atlantic Council's jurisdiction and the stock is eligible for removal from the CMP FMP. The majority of Atlantic group cobia landings are in state waters and the stock is not overfished or undergoing overfishing. Additionally, the CMP FMP has proven ineffective at resolving the primary ongoing user conflict between the recreational fishermen from different states, and it does not currently appear to be capable of promoting a more efficient utilization of the resource. Most significantly, the harvest of Atlantic cobia is adequately managed in state waters by the ASMFC and their Interstate FMP, which was implemented in April 2018. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive recreational regulations than those specified in the Interstate FMP. Furthermore, the Interstate FMP requires that if a state's average annual landings over the 3-year time period are greater than their annual harvest target, then that state must adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years. For the commercial sector, the ASMFC's Interstate FMP specified management measures for Atlantic cobia that are consistent with the current ACL and AM specified in the Federal regulations implemented pursuant to the CMP FMP.

Therefore, NMFS and the Councils have determined that management by the states, in conjunction with the ASMFC and Secretary of Commerce, will be more effective at constraining harvest and preventing overfishing; thereby, offering greater biological protection to the stock and decreasing adverse socioeconomic effects to fishermen. Further, management of

Atlantic cobia by the ASMFC is expected to promote a more equitable distribution of harvest of the species among the states.

**Management Measure Contained in This Proposed Rule**

This proposed rule would remove Atlantic cobia from Federal management under the Magnuson-Stevens Act. At the same time, it would implement comparable regulations, in Federal waters, under the Atlantic Coastal Act.

Current commercial management measures for Atlantic cobia include a minimum size limit of 33 inches (83.8 cm), fork length and a commercial trip limit of two fish per person per day, not to exceed six fish per vessel per day. Federal regulations for recreational harvest of Atlantic cobia in Federal waters include a minimum size limit of 36 inches (91.4 cm), fork length and a bag and possession of one fish per person per day, not to exceed six fish per vessel per day.

Under the authority of the Atlantic Coastal Act, this proposed rule would implement these same minimum size limits, recreational bag and possession limits, and commercial trip limits in Federal waters. Additionally, this proposed rule would implement regulations consistent with current CMP FMP regulations for the fishing year, general prohibitions, authorized gear, and landing fish intact provisions specific to Atlantic cobia.

The current Atlantic cobia commercial ACL is 50,000 lb (22,680 kg) and the recreational ACL is 620,000 lb (281,227 kg). The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove these sector ACLs. Under this proposed rule, a commercial quota of 50,000 lb (22,280 kg), would be implemented consistent with the current commercial ACL. The current commercial accountability measure (AM) requires that if commercial landings reach or are projected to reach the ACL, then commercial harvest will be prohibited for the remainder of the fishing year. This proposed rule would implement commercial quota closure provisions through the Atlantic Coastal Act to prohibit commercial harvest once the commercial quota is reached or projected to be reached.

The ASMFC's Interstate FMP has specified a recreational harvest limit (RHL) of 613,800 lb (278,415 kg) in state and Federal waters and state-by-state recreational quota shares (harvest targets) of the coastwide RHL. During the development of the Interstate FMP, one percent of the amount of the recreational allocation of the current Federal ACL (initially 6,200 lb (2,812 kg)) was set aside to account for harvests in *de minimis* states (Maryland, Delaware, and New Jersey). The harvest targets for each state, in both state and Federal waters, are 58,311 lb (26,449 kg) for Georgia, 74,885 lb (33,967 kg) for South Carolina, 236,316 lb (107,191 kg) for North Carolina and 244,292 lb (110,809 kg) for Virginia. Percentage allocations are based on states' percentages of the coastwide historical landings in numbers of fish, derived as 50 percent of the 10-year average landings from 2006–2015 and 50 percent of the 5-year average landings from 2011–2015.

The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove the recreational sector AM for Atlantic cobia. The recreational AM requires that both the recreational ACL and the stock ACL are exceeded in a fishing year then in the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the recreational vessel limit will be reduced to no less than 2 fish per vessel to ensure recreational landings achieve the recreational annual catch target, but do not exceed the recreational ACL in that fishing year. Additionally, if the reduction in the recreational vessel limit is determined to be insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season will also be reduced.

In place of the current recreational AM, state-defined regulations and seasons implemented consistent with the ASMFC's Interstate FMP are designed to keep harvest within the state harvest targets. If a state's average annual landings over the 3-year time period are greater than their annual harvest target, then the Interstate FMP requires the state to adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years.

If Amendment 31 is subsequently approved and implemented, Atlantic cobia would be managed under the ASMFC's Interstate FMP in state waters and through Atlantic Coastal Act regulations in Federal waters. This will ensure that Atlantic cobia continues to be managed in Federal waters and that there would be no lapse in management of the stock. These regulations would be expected to be implemented concurrently with the removal of Atlantic cobia from the CMP FMP and serve essentially the same function as the current CMP FMP based management measures. It is expected that the Interstate FMP and Atlantic Coastal Act would provide adequate management of Atlantic cobia in state and Federal waters and ensure that the stock has sufficient conservation and management measures in place.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 31, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment. Additionally, this proposed rule is compatible with the effective implementation of the ASMFC's Interstate Fishery management Plan for Atlantic Migratory Group Cobia.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS expects this proposed rule would reduce regulatory complexity and administrative costs, as well as provide economic benefits to recreational anglers through expanded harvest opportunities in Federal waters and a more stable recreational fishing season for Atlantic cobia.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act and the Atlantic Coastal Act provide the statutory basis for this proposed rule.

This proposed rule would apply to all commercial vessels, charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest Atlantic cobia in Federal waters of the Atlantic. Because no Federal permit is required for the commercial harvest or sale of Atlantic cobia, the distinction between commercial and recreational fishing activity for the purposes of this proposed rule is whether the fish are sold. Individuals that harvest Atlantic cobia under the recreational bag limit in Federal waters and who do not subsequently sell these fish are considered to be recreational anglers. Recreational anglers who would

be directly affected by this proposed rule are not considered small entities under the RFA, and are, therefore, outside the scope of this analysis. 5 U.S.C. 603. Small entities include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' 5 U.S.C. 601(6) and 601(3)–(5). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on businesses that engage in commercial fishing (*i.e.,* those that sell their harvests of Atlantic cobia) will be discussed.

For-hire vessels sell fishing services to recreational anglers. The proposed changes to the CMP FMP would not directly alter the services sold by these for-hire vessels. Any change in anglers' demand for these fishing services (and associated economic effects) as a result of the proposed action would be secondary to any direct effect on anglers and, therefore, would be an indirect effect of this proposed rule. Indirect effects are not germane to the RFA; however, because for-hire captains and crew are allowed to harvest and sell Atlantic cobia under the possession limit when the commercial season is open, for-hire businesses, or employees thereof, could be directly affected by this proposed rule as well.

Data from 2012 through 2016 were used in Amendment 31 and these data provided the basis for the Councils' decisions. Although no Federal permit is required for the commercial harvest and sale of Atlantic cobia, vessels with other Federal commercial permits are required to report their catches for all species harvested, including Atlantic cobia. On average from 2012 through 2016, there were only 100 commercial vessels with Federal permits that reported landings of Atlantic cobia in the South Atlantic (excluding east Florida, which is outside of the Atlantic cobia stock boundary). Their average annual vessel-level revenue from all species for 2012 through 2016 was approximately $62,000 (2017 dollars) and Atlantic cobia accounted for less than 1 percent of this revenue. The maximum annual revenue from all species reported by a single one of these vessels from 2012 through 2016 was approximately $300,000 (2017 dollars). In the Mid-Atlantic, there were 28 vessels, on average, that harvested Atlantic cobia from 2012 through 2016. Complete revenue profiles for these vessels are not available; however, on average, each vessel earned approximately $2,000 (2017 dollars) per year from the sale of Atlantic cobia. Finally, it is unknown how many non-federally permitted vessels may have fished commercially for Atlantic cobia in Federal waters during this time.

As of June 15, 2018, there were 1,757 valid Federal South Atlantic charter/headboat CMP permits. Although the for-hire permit application collects information on the primary method of operation, the resultant permit itself does not identify the permitted vessel as either a headboat or a charter vessel. Operation as either a headboat or charter vessel is not restricted by permitting regulations and vessels may operate in both capacities. However, only selected headboats are required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. As of June 11, 2018, 64 South Atlantic headboats were registered in the SRHS. As a result, of the 1,757 vessels with South Atlantic charter/headboat CMP permits, up to 64 may primarily operate as headboats and the remainder as charter vessels. The average charter vessel is estimated to receive approximately $120,000 (2017 dollars) in annual revenue. The average headboat is estimated to receive approximately $213,000 (2017 dollars) in annual revenue.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. All of the commercial vessels directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard.

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide. All for-hire businesses expected to be directly affected by this proposed rule are believed to be small business entities. NMFS has not identified any other small entities that would be directly affected by this proposed rule.

This proposed rule would remove Atlantic cobia and associated regulatory measures from the CMP FMP. The ASMFC would manage Atlantic cobia in state waters and NMFS would promulgate regulations under the Atlantic Coastal Act to replace the existing Magnuson-Stevens Act based regulations in Federal waters. This would ensure that Atlantic cobia continues to be managed in Federal waters and there is no lapse in management of the stock. It is expected that commercial management measures for Atlantic cobia implemented in state waters through the ASMFC Interstate FMP, and in Federal waters through the Atlantic Coastal Act would remain consistent with those currently in place, thereby, not generating any direct economic effects on any small entities.

The information provided above supports a determination that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule.

**List of Subjects in 50 CFR Parts 600, 622 and 697**

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

Dated: November 1, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 600, 622, and 697 are proposed to be amended as follows:

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under heading ''III. South Atlantic Fishery Management Council,'' remove

and reserve entry 8.C and add entry 25 to read as follows:

**§ 600.725 General prohibitions.**

* * * * *

(v) * * *

| Fishery | Authorized gear types |
|---|---|
| * * * * * * * | |
| **III. South Atlantic Fishery Management Council** | |
| * * * * * * * | |
| 25. Atlantic Migratory Group Cobia (Non-FMP): | |
| A. Commercial Fishery | A. Longline, handline, rod and reel, bandit gear, spear. |
| B. Recreational Fishery | B. Bandit gear, rod and reel, handline, spear. |
| * * * * * * * | |

* * * * *

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

**§ 622.1 Purpose and scope.**

* * * * *

■ 4. In § 622.1, amend Table 1 to § 622.1—FMPs Implemented Under Part 622 by revising the entry for ''FMP for Coastal Migratory Pelagic Resources'', and adding footnote 9 to read as follows:

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

| FMP title | Responsible fishery management council(s) | Geographical area |
|---|---|---|
| FMP for Coastal Migratory Pelagic Resources ..... | GMFMC/SAFMC ..... | Gulf [1] [9], Mid-Atlantic [1] [9], South Atlantic [1] [9]. |
| * * * * * * * | | |

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

* * * * * * * * *

[9] Cobia is managed by the FMP in the Gulf EEZ and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border.

* * * * *

■ 5. In § 622.375, revise paragraph (a)(2) to read as follows:

**§ 622.375 Authorized and unauthorized gear.**

* * * * *

(a) * * *

(2) *Cobia, Gulf migratory group.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf EEZ, and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border for cobia—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. In § 622.380, revise paragraph (a)(1) and remove and reserve paragraph (a)(2).

**§ 622.380 Size limits.**

* * * * *

(a) * * *

(1) In the Gulf and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border—33 inches (83.8 cm), fork length.

* * * * *

■ 7. In § 622.381, revise the first sentence of paragraph (a) to read as follows:

**§ 622.381 Landing fish intact.**

(a) Cobia in or from the Gulf and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border, and king mackerel and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel and Spanish mackerel in paragraph (b) of this section, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.* * *

* * * * *

■ 8. In § 622.382, revise the heading for paragraph (a) and remove paragraph (a)(1)(vi) to read as follows:

**§ 622.382 Bag and possession limits.**

* * * * *

(a) *King mackerel and Spanish mackerel—** * *

* * * * *

**§ 622.384 [Amended]**

■ 9. In § 622.384, remove and reserve paragraph (d)(2).

**§ 622.385 [Amended]**

■ 10. In § 622.385, remove paragraph (c).

**§ 622.388 [Amended]**

■ 11. § 622.388, remove paragraph (f).

■ 12. Revise Figure 3 of Appendix G to part 622 to read as follows:

**Appendix G to Part 622—Coastal Migratory Pelagics Zone Illustrations**

* * * * *

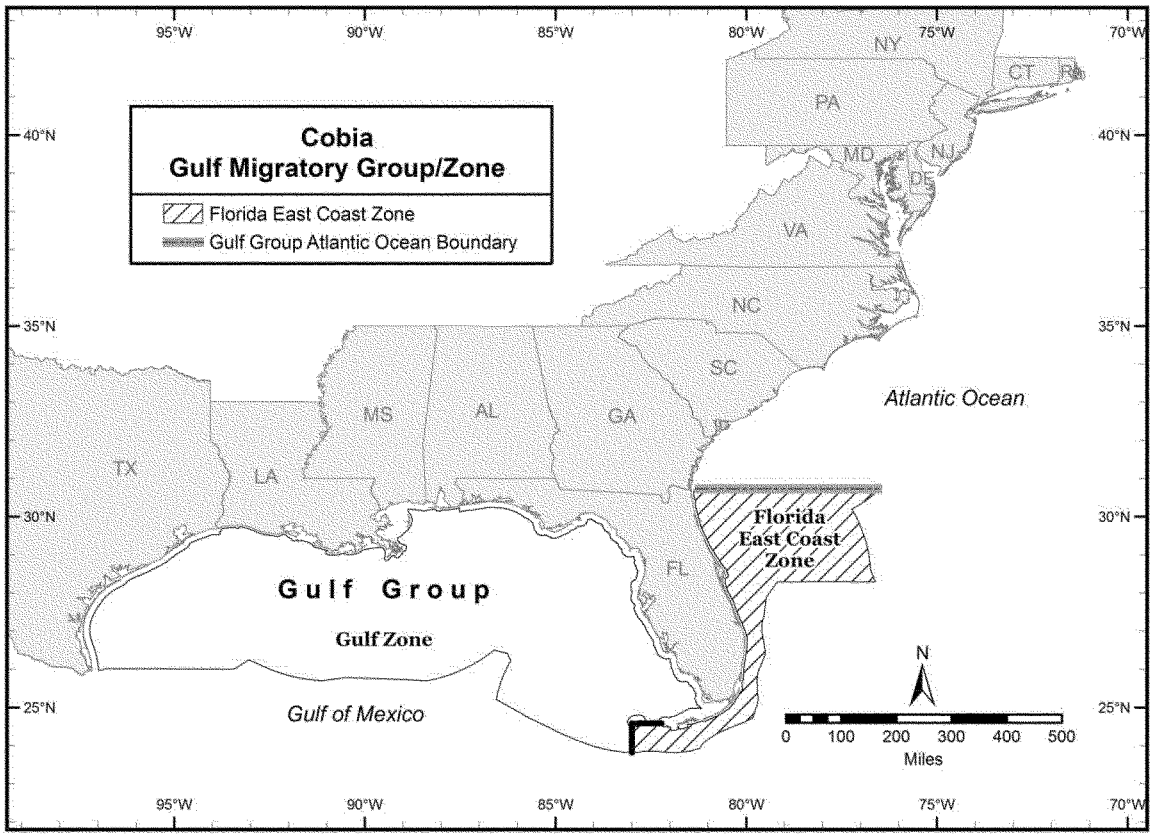


Figure 3 of Appendix G to Part 622--Cobia

## PART 697–ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 13. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 14. In § 697.2(a), add the definition for ''Atlantic migratory group cobia'' in alphabetical order to read as follows:

### § 697.2 Definitions.

(a) * * *

* * * * *

*Atlantic migratory group cobia,* means *Rachycentron canadum,* a whole fish or a part thereof, bounded by a line extending from the intersection point of New York, Connecticut, and Rhode Island (41°18′16.249″ N lat. and 71°54′28.477″ W long.) southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ and south to a line extending due east of the Florida/Georgia border (30°42′45.6″ N lat.).

* * * * *

■ 15. In § 697.7, add paragraph (g) to read as follows:

### § 697.7 Prohibitions.

* * * * *

(g) *Atlantic migratory group cobia.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in this part.

(2) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in this part or as may be specified under this part.

(3) Possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in this part.

(4) Fail to maintain a fish intact through offloading ashore, as specified in this part.

(5) Exceed a bag or possession limit, as specified in this part.

(6) Fail to comply with the species-specific limitations, as specified in this part.

(7) Fail to comply with the restrictions that apply after closure of a fishery, sector, or component of a fishery, as specified in this part.

(8) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in this part.

(9) Fail to comply with the restrictions on sale/purchase, as specified in this part.

(10) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in this part.

(11) Fail to comply with any other requirement or restriction specified in this part or violate any provision(s) in this part.

■ 16. Add § 697.28 to 50 CFR part 697, Subpart B, to read as follows:

### § 697.28 Atlantic migratory group cobia.

(a) *Fishing year.* The fishing year for Atlantic migratory cobia is January 1 through December 31.

(b) *Authorized gear.* Subject to the prohibitions on gear/methods in § 697.7,

the following are the only fishing gears that may be used for cobia in the EEZ of the Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, pelagic longline, and spear (including powerheads).

(c) *Size limits.* All size limits in this section are minimum size limits. Atlantic migratory group cobia not in compliance with its size limit, as specified in this section, in or from the EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section. If a size limit in paragraph (c)(1) or (2) of this section differs from a size limit from an Atlantic state(s), then any vessel operator in the EEZ must comply with the more restrictive requirement or measure when in the waters off that state.

(1) 33 inches (83.8), fork length, for cobia that are sold (commercial sector).

(2) 36 inches (91.4 cm), fork length, for cobia that are not sold (recreational sector).

(d) *Landing fish intact.* Atlantic migratory group cobia in the EEZ, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(e) *Bag and possession limits.* If a bag and/or possession limit in paragraph (e)(1) or (2) of this section differs from a bag and/or possession limit from an Atlantic state(s), then any vessel operator in the EEZ must comply with the more restrictive requirement or measure when in the waters off that state.

(1) Atlantic migratory group cobia that are not sold (recreational sector)—1, not to exceed 6 fish per vessel per day.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(f) *Quotas.* All weights are in round and eviscerated weight combined.

(1) The following quota applies to persons who fish for cobia and sell their catch—50,000 lb (22,680 kg). If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in this paragraph (f)(1) of this section, the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.

(2) *Restrictions applicable after a quota closure.* (i) If the recreational sector for Atlantic migratory group cobia is open, the bag and possession specified in paragraph (e) of this section apply to all harvest or possession in or from the EEZ. If the recreational sector is closed, all applicable harvest or possession in or from the EEZ is prohibited.

(ii) The sale or purchase of Atlantic migratory group cobia in or from the EEZ during a closure is prohibited. The prohibition on the sale or purchase during a closure does not apply to Atlantic migratory group cobia that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(g) *Commercial trip limits.* Commercial trip limits are limits on the amount of Atlantic migratory group cobia that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. Atlantic migratory group cobia specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows—Until the commercial quota specified in paragraph (f)(1) of this section is reached, 2 fish per person, not to exceed 6 fish per vessel.

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# Notices

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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

November 6, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 10, 2018 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:* Request for Aerial Photography.

*OMB Control Number:* 0560–0176.

*Summary of Collection:* The information collection is needed to enable the Department of Agriculture to effectively administrate the Aerial Photography Program. The Aerial Photography Field Office (APFO) has the responsibility for conducting and coordinating the FSA's aerial photography, remote sensing programs, and the aerial photography flying contract programs. The digital and film imagery secured by Farm Service Agency (FSA) is public domain and reproductions are available at cost to any customer with a need. All receipts from the sale of aerial photography products and services are retained by FSA. The FSA–441, Request for Aerial Photography, is the form FSA supplies to the customers for placing an order for aerial imagery products and services. FSA also collects information using the following two FSA 441B, Customer Digital Print Form, and FSA 441C APFO Service Quality Survey.

*Need and Use of the Information:* FSA will collect the name, address, contact name, telephone, fax, email, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/PO amount. Customers have the option of placing orders by mail, fax, telephone, and walk-in. Furnishing this information requires the customer to research and prepare their request before submitting it to APFO. Information collected is used to process fiscal obligations, communicate with the customer, process the request, and ship the requested products.

*Description of Respondents:* Farms; Individuals or household; Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 1,465.

*Frequency of Responses:* Recordkeeping; Reporting; Annually; Other (when ordering).

*Total Burden Hours:* 433.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2018–24529 Filed 11–8–18; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2018–0043]**

### Changes to the Salmonella and Campylobacter Verification Testing Program: Revised Categorization and Follow-Up Sampling Procedures

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing and requesting comments on revised categorization and follow-up sampling procedures relative to pathogen reduction performance standards. FSIS will proceed with web-posting individual establishments' category status for pathogen reduction performance standards for *Salmonella* in raw chicken parts and not-ready-to-eat (NRTE) comminuted chicken and turkey, as previously announced, and updating individual poultry carcass establishments' category status in November. However, the category status reported will be based on FSIS sample results during the 52-week window ending the last Saturday of the previous month, rather than on results during the last 13 completed 52-week windows. At the same time, FSIS will no longer include follow-up sampling results as part of the moving window when determining establishment category status. Finally, FSIS will update the individual establishments' category status on its website on a monthly basis and will maintain the last six months of historical establishment-specific categorization data on the website, as it becomes available, using the revised categorization procedures announced in this notice.

FSIS intends to use the revised categorization procedures for all establishments subject to a pathogen reduction performance standard for *Salmonella* or *Campylobacter,* including

beef and pork establishments, in the future. FSIS will announce any expanded use of the revised procedures in the **Federal Register** and will request public comment.

FSIS will proceed with implementing the changes on the date announced in this notice. However, FSIS is seeking comments on the changes as part of its effort to continuously assess and improve the effectiveness of Agency policy.

**DATES:** Submit comments on or before December 10, 2018. On November 23, 2018, FSIS will:

- Web-post individual establishments' category status for pathogen reduction performance standards for *Salmonella* in raw chicken parts and NRTE comminuted chicken and turkey and update individual poultry carcass establishments' category status based on FSIS sample results during the 52-week window ending on October 27, 2018;
- Discontinue including follow-up sampling results as part of the moving window when determining category status for that establishment; and
- Begin updating individual establishments' category status on the FSIS website on a monthly basis using the revised procedures announced in this notice.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0043. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Roberta Wagner, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

**SUPPLEMENTARY INFORMATION:** FSIS is responsible for verifying that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly packaged and labeled. In support of this mission, FSIS began its *Salmonella* verification testing program with the final rule entitled ''Pathogen Reduction; Hazard Analysis and Critical Control Point Systems'' (PR/HACCP Rule), published on July 25, 1996 (61 FR 38805). Among other things, the PR/HACCP Rule established *Salmonella* pathogen reduction performance standards for establishments that slaughter selected classes of food animals and/or that produce selected classes of raw ground products. FSIS continues to use the pathogen reduction performance standards to ensure that eligible establishments are consistently controlling or reducing harmful bacteria on raw meat and poultry products.

FSIS began posting individual establishment categories for *Salmonella* performance standards for poultry carcasses in May 2016.[1] In November 2016, FSIS temporarily suspended the web posting of category status for individual carcass establishments to analyze the effect of the use of FSIS's new neutralizing Buffered Peptone Water on the *Salmonella* performance standards and to assess the implementation of follow-up sampling at Category 3 poultry carcass establishments (that is, establishments not meeting the standard). Upon conclusion of these analyses, FSIS resumed web posting of individual establishments' category status for *Salmonella* performance standards for poultry carcasses on January 23, 2018. As discussed in the February 11, 2016 **Federal Register** notice, data support that public posting of establishment performance encourages establishments to make changes to address *Salmonella* (81 FR 7285).

FSIS also explained in the February 2016 **Federal Register** notice how it would assess establishment performance using a moving window of FSIS sampling results in poultry establishments subject to a pathogen reduction performance standard. For all establishments, FSIS defines an individual window as the results from FSIS sampling over 52 consecutive Sunday-to-Saturday weeks. Under the policy in the February 2016 **Federal Register** notice, FSIS used for each window all FSIS samples taken in any given week, including follow-up samples collected by FSIS to verify the adequacy of corrective actions taken by an establishment that was not meeting a performance standard. The category assigned to an establishment has been based on results in the 13 most recent completed 52-week windows, which includes 64 weeks of data. If the establishment exceeded the performance standard in any of the last 13 completed windows, it was assigned to Category 3, *i.e.,* designated as not meeting the standard (81 FR at 7287). Thus, under this policy, establishments that implemented effective corrective actions and demonstrated sustained process control remained in Category 3 until all 13 windows registered Category 1 or 2, *i.e.,* reflected that the establishment was meeting the performance standard over 13 52-week windows.

Although assessing 13 windows of data reduces the chance that an establishment's category status will change when there is no actual improvement in process control and improves FSIS's ability to assign small and very small establishments to a category,[2] an establishment's category status may not necessarily reflect the current conditions in an establishment that has taken effective corrective actions. Under the current policy, even if an establishment has been in category 1 for multiple weeks, if it was in category 3 in any one of the last 13 52-week windows, FSIS would designate that establishment as category 3. Representatives from the poultry industry have raised these concerns to FSIS. In response to their concerns and internal concerns about whether the 13-window categorization procedure is accurately indicating the state of an establishment's process control following implementation of corrective actions, FSIS has reevaluated its policies.

[1] *https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/microbiology/salmonella-verification-testing-program/establishment-categories-cu.*

[2] Since there are 13 52-week windows, an establishment has 13 chances to be categorized. With fewer windows, fewer establishments may be categorized. This is because there is a minimum number of samples needed to assess process control for each product class by pathogen (*e.g.,* the minimum number of samples for *Salmonella* in broiler carcasses is 11).

**Changes to Categorization Procedure**

With the goal of encouraging sustained improvements in process control while still accurately reflecting current conditions in the establishment, FSIS has considered a full range of alternatives to the current 13-window categorization procedure. Based on the evaluation of available data, FSIS concluded that reducing the number of completed 52-week windows assessed from 13 to one (1) is the best means to accomplish this goal. This approach will continue to minimize the effect of seasonal variation in pathogen incidence on category status, while providing a pathway for establishments to improve their category status after implementing effective corrective actions. This approach is far less complex than the current 13-window categorization procedure. This approach will not have an effect on public health.

FSIS anticipates that the revised categorization procedure could reduce category stability over time, meaning that establishments could experience more frequent changes in category status. Using data analyzed over a 20-month period (from January 2017 to August 2018), FSIS compared the current 13-window categorization procedure to the revised 1-window categorization procedure and found the effect on stability of the revised categorization procedure for establishments was minimal for most establishments. The largest effect on stability was observed with establishments producing raw chicken parts. For these establishments, the number of establishments assigned to Category 3 two or more times over the 20-month period increased, from six establishments (1 percent) under the current 13-window categorization procedure, to 49 establishments (12 percent) using the revised 1-window categorization procedure. This finding could be due to the variability in the incidence of *Salmonella* in raw chicken parts compared to other products.

In addition, available data suggests the revised categorization procedure has the greatest potential to reduce the time an establishment spends in Category 3 when it has taken effective corrective actions. FSIS evaluated the impact of the revised categorization procedure for eligible establishments producing chicken carcasses from January 2017 to August 2018. Under the revised procedure, the 75th percentile for time spent in Category 3 for these establishments was 156 days, compared to 234 days under the current 13-window categorization procedure. This means that with the revised categorization procedure, 75 percent of these establishments remained in Category 3 for 156 days or less, compared to 234 days or less for the current 13-window categorization procedure.

On November 23, 2018, FSIS will post on its website the category status of individual establishments for pathogen reduction performance standards for *Salmonella* in raw chicken parts and NRTE comminuted chicken and turkey, as previously announced,[3] and updated individual poultry carcass establishments' category status. However, the category status reported will be based on FSIS sample results, excluding any follow-up sample results, during the 52-week window ending on October 27, 2018, rather than on sample results, including follow-up sample results, in the last 13 completed 52-week windows. FSIS will categorize these establishments following the criteria below:

- *Category 1:* Establishments that have achieved 50 percent or less of the maximum allowable percent positive during the most recent completed 52-week moving window.
- *Category 2:* Establishments that meet the maximum allowable percent positive but have results greater than 50 percent of the maximum allowable percent positive during the most recent completed 52-week moving window.
- *Category 3:* Establishments that have exceeded the maximum allowable percent positive during the most recent completed 52-week moving window.

Thereafter, FSIS will update category status on the FSIS website for these establishments using the revised categorization procedures on a monthly basis based on the category status for the 52-week window ending the last Saturday of the previous month.

To be clear, the pathogen reduction performance standards for *Salmonella* in young chicken or turkey carcasses, raw chicken parts, and NRTE comminuted chicken and turkey products, and the minimum number of samples needed for FSIS to assess whether these establishments meet the standards have not changed.

**Follow-Up Sampling**

FSIS also examined the role of follow-up samples established in the February 2016 **Federal Register** notice, where FSIS stated that follow-up samples would count towards the samples collected as part of the moving window for that establishment. FSIS established that policy because we thought it would more quickly assess whether establishments have reduced variability of process control. FSIS evaluated follow-up sampling results from establishments producing chicken carcasses since January 2017, when this sampling was introduced. The Agency concluded that follow-up sample results did not significantly influence the amount of time that establishments resided in Category 3 and that FSIS could effectively categorize establishments without including Agency follow-up sampling results.

Therefore, starting with the data posted on November 23, 2018, FSIS will no longer include follow-up sampling results as part of the moving window when determining establishment category status. FSIS's evaluation of its follow-up sampling strategy is ongoing. Potential changes being considered include the timing and number of follow-up samples collected. While these and other potential changes are considered, FSIS will continue conducting follow-up sampling in establishments that do not meet a *Salmonella* pathogen reduction performance standard. However, to reduce the potential for redundant FSIS resource expenditure in establishments that undergo multiple changes in category status over a short period of time, FSIS will consider limiting the number of follow-up sets of samples[4] and Public Health Risk Evaluations initiated when an establishment exceeds a pathogen reduction performance standard to no more than once every 120 days. The justification for this is that an establishment is provided 30 days to implement corrective actions prior to assignment of the follow-up sample set in the Public Health Information System. Establishments then have 90 days to validate any changes to their Hazard Analysis and Critical Control Point (HACCP) system after being notified that it is in Category 3.

**Additional Information**

In addition to posting establishment-specific category status information, FSIS intends to begin maintaining historical individual establishment categorization data on the FSIS website. FSIS estimates providing six months of

[3] On May 4, 2018, FSIS announced an initial posting date for raw chicken parts and NRTE comminuted poultry products of ''October 2018'' in the *Constituent Update.* Subsequently, the date was extended to ''November 2018 . . . after Thanksgiving.'' Webinar presented to stakeholders with new date is available at *https://www.fsis.usda.gov/wps/wcm/connect/f059169f-5cb3-4ae5-9388-7de79b9fa217/Salmonella-Categorization-Webinar061318.pdf?MOD=AJPERES.*

[4] Depending on production volume, 16 or 8 samples would be collected as part of a follow-up sample set.

historical categorization data for each establishment would be useful for those who want to make business decisions using the information. FSIS currently only maintains the most recent monthly individual establishment posting on its website. FSIS will also continue providing aggregate sampling results relative to categories for establishments producing young chicken or turkey carcasses, raw chicken parts, or NRTE comminuted chicken and turkey products.[5] FSIS will continue to maintain the most recent year of aggregate data reports on its website as well.

FSIS intends to use the revised categorization and any follow-up sampling methodology, as well as the web posting procedures announced in this notice, for any establishment subject to a pathogen reduction performance standard for *Salmonella* or *Campylobacter* at a future time, including beef and pork establishments. FSIS will announce any expanded use of the revised procedures in the **Federal Register** and will request public comment.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service, which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

[5] Available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/microbiology/salmonella-verification-testing-program/aggregate-data.*

**USDA Non-Discrimination Statement**

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

*How To File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**Carmen M. Rottenberg,**

*Administrator.*

[FR Doc. 2018–24540 Filed 11–8–18; 8:45 am]

**BILLING CODE 3410–DM–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the North Carolina Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the North Carolina Advisory Committee will hold a meeting on Thursday, December 12, 2018, to discuss potential project topics.

**DATES:** The meeting will be held on Thursday, December 12, 2018, 12:00 p.m. EST.

**ADDRESSES:** The meeting will be by teleconference. Toll-free call-in number: 1–855–710–4181, conference ID: 7959093.

*For Additional Information Contact:* Jeff Hinton, DFO, at *jhinton@usccr.gov* or 1–202–499–0263.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Regional Program Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions
  Thea Monet, Chair
North Carolina Advisory Committee discussion of potential project topics
  Thea Monet, Chair
Open Comment
  Staff/Advisory Committee
Public Participation

Adjournment

Dated: November 5, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Program Unit.*

[FR Doc. 2018–24499 Filed 11–8–18; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Kentucky Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the Kentucky Advisory Committee will hold a meeting on Thursday, December 6, 2018, for the purpose of continuing committee discussion of project proposal topics.

**DATES:** The meeting will be held on Thursday, December 6, 2018, 3:30 p.m. EST.

**ADDRESSES:** The meeting will be by teleconference. Toll-free call-in number: 1–855–710–4181, conference ID: 8905137.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hinton, DFO, at *jhinton@usccr.gov* or 1–202–499–0263.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Regional Program Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kentucky Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

**Agenda**

Welcome and attendance of advisory committee members
Dr. Betty Griffin, Chairman/Jeff Hinton, Regional Director, USCCRSRO
Kentucky Advisory Committee update/ discussion of project proposal topics
Dr. Betty Griffin, Chairman, Advisory Committee
Open Comment
Advisory Committee
Public Participation
Adjournment

Dated: November 5, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–24503 Filed 11–8–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–45–2018]**

### Foreign-Trade Zone (FTZ) 70—Detroit, Michigan, Authorization of Production Activity, Brose New Boston, Inc. (Passenger Vehicle and SUV Subassemblies), New Boston, Michigan

On July 6, 2018, Brose New Boston, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 70X, in New Boston, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 33918, July 18, 2018). On November 5, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 5, 2018.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2018–24555 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG620**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Research Steering Committee of the Mid-Atlantic Fishery Management Council will hold a meeting.

**DATES:** The meeting will be held on Tuesday, November 27, beginning at 10 a.m. and conclude by 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of this Research Steering Committee meeting is to discuss the current state of the Collaborative Research Program, as well as make recommendations to the Council regarding future collaborative research initiatives. Agenda topics include: A review of the current program, status of Council funded research projects, future research topics and opportunities, and research set-aside.

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24600 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG610**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, November 28, 2018 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; phone: (401) 919–5007.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

The Scallop Committee will be discussing Framework 30 with an emphasis on reviewing specifications alternatives in Framework 30 and make final recommendations. Framework 30 will set specifications including acceptable biological catch/annual catch limit (ABC/ACLs), Days at Sea (DAS), access area allocations for Limited Access (LA) and Limited Access General Category (LAGC), Total Allowable Catch (TAC) for Northern Gulf of Maine (NGOM) management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2019 and default specifications for fishing year 2020. Review standard default measures developed through Framework 30 and make final recommendations. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24588 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG615**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will meet December 3, 2018 through December 11, 2018.

**DATES:** The Council will begin its plenary session at 8 a.m. in the Aleutian Room on Wednesday, December 5, 2018 continuing through Tuesday, December 11, 2018. The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday, December 3, 2018 and continue through Wednesday, December 5, 2018. The Council's Advisory Panel (AP) will begin at 8 a.m.in the Dillingham/Katmai Room on Tuesday, December 4, 2018 and continue through Saturday, December 8, 2018. The Charter Halibut Management Committee will meet on Monday, December 3, 2018 from 1 p.m. to 5 p.m. (room TBD). The Cook Inlet Salmon Committee will meet on Tuesday, December 4, 2018 from 8 a.m. to 5 p.m. (room TBD). The Enforcement Committee will meet on Tuesday, December 4, 2018 from 1 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Ave, Anchorage, AK 99501.

*Council address:* North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

**FOR FURTHER INFORMATION CONTACT:** Diana Evans, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

*Monday, December 3, 2018 through Tuesday, December 11, 2018*

*Council Plenary Session:* The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report (including Joint Protocol Committee Report, and update on Halibut Stakeholder Committee)
(2) NMFS Management Report (including year-end inseason management report, Final 2019 Observer Annual Deployment Plan)
(3) NOAA GC Report (including report on recusal rule (T))
(4) NOAA Enforcement Report
(5) ADF&G Report
(6) USCG Report
(7) USFWS Report
(8) IPHC Report
(9) Protected Species Report
(10) 2019 Charter halibut management measures—Final action
(11) GOA Groundfish Harvest Specifications—Final specifications, Ecosystem Status report, PT report
(12) BSAI Groundfish Harvest Specifications—Final specifications, Ecosystem Status report, PT report
(13) Bering Sea Fishery Ecosystem Plan—Adopt FEP, Ecosystem Committee report
(14) AI Pacific cod set aside adjustment—Final action
(15) Bering Sea Snow Crab PSC limits—Initial Review
(16) GOA pollock, cod seasons/allocations—Initial Review

(17) Exempted Fishing Permits for Adak pollock, A80 crab monitoring—Review
(18) Western GOA pollock vessel limitations—Discussion paper
(19) Observer coverage on vessels delivering to tenders—Update, action as necessary
(20) Trawl EM 2019 Cooperative Research Plan—Review, EMC report
(21) Central GOA Rockfish reauthorization—Discussion Paper
(22) BSAI Pacific cod allocation review—Review workplan
(23) Cook Inlet Salmon FMP amendment—Discussion Paper, CISC report
(24) Social Science Planning Team—Report, staff suggestions for tribal representative

The Advisory Panel will address Council agenda items (10) through (24).

The SSC agenda will include the following issues:

(1) Exempted Fishing Permits for Adak pollock, A80 crab monitoring—Review
(2) BSAI Pacific cod allocation review—Review workplan
(3) GOA Groundfish Harvest Specifications—Final specifications, Ecosystem Status report, PT report
(4) BSAI Groundfish Harvest Specifications—Final specifications, Ecosystem Status report, PT report
(5) Bering Sea Snow Crab PSC limits—Initial Review
(6) GOA pollock, cod seasons/allocations—Initial Review
(7) Bering Sea Fishery Ecosystem Plan—Adopt FEP, Ecosystem Committee report

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Charter Halibut Management Committee will review and recommend management measures for the charter halibut fisheries in International Pacific Halibut Commission (IPHC) areas 2C and 3A for implementation in 2019, and other business. The Enforcement Committee will review the Enforcement Committee Terms of Reference and Enforcement Precepts, and will receive a presentation of anonymous survey results from Observers regarding observer safety/harassment.

The Cook Inlet Salmon Committee agenda will include the following issues:

(1) Review and provide comments on specific, Council-identified issues
(2) Develop options for fishery management measures for specific, Council-identified management needs
(3) Provide perspectives on potential social and economic impacts of proposed fishery management measures

The Agendas are subject to change, and the latest versions will be posted at *http://www.npfmc.org/*

**Public Comment**

Public comment letters will be accepted and should be submitted either electronically via the eCommenting portal at: *meetings.npfmc.org*or through the mail: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252. Deadline for comments is November 30, 2018, at 12 p.m.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24601 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG616**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of telephonic meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Ecosystem Committee will hold a teleconference on November 27, 2018.

**DATES:** The meeting will be held on Tuesday, November 27, 2018 from 1 p.m. to 4 p.m., Alaska Standard Time.

**ADDRESSES:** The meeting will be held telephonically. Teleconference line: (907) 271–2896.

*Council address:* North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

**FOR FURTHER INFORMATION CONTACT:** Steve MacLean, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Tuesday, November 27, 2018*

The meeting agenda includes review and discussion of the Bering Sea Fishery Ecosystem Plan. The Agenda is subject to change, and the latest version will be posted at: *https://www.npfmc.org/committees/ecosystem-committee*

**Public Comment**

Public comment letters will be accepted and should be submitted either electronically to Steve MacLean, Council staff: *steve.maclean@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. Oral public testimony will be accepted at the discretion of the co-chairs.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24599 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG617**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of telephonic meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Halibut Stakeholder Committee will hold a teleconference on November 29, 2018.

**DATES:** The meeting will be held on Thursday, November 29, 2018, from 10 a.m. to 12 p.m., Alaska Standard Time.

**ADDRESSES:** The meeting will be held telephonically. Teleconference line: (907) 271–2896.

*Council address:* North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:**

### Agenda

*Thursday, November 29, 2018*

The agenda will be to discuss terms of reference for the committee, timing and process for submission of scenarios, information available, process for recommending management objectives and performance metrics, scheduling, and other issues. The Agenda is subject to change, and the latest version will be posted at: *https://www.npfmc.org*

### Public Comment

Public comment letters will be accepted and should be submitted either electronically to Diana Stram, Council staff: *diana.stram@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. Oral public testimony will be accepted at the discretion of the Chair.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24602 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG609**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, November 27, 2018 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; phone: (401) 919–5007.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

### Agenda

The Scallop Advisory Panel will be discussing Framework 30 with an emphasis on reviewing specifications alternatives in Framework 30 and make final recommendations. Framework 30 will set specifications including acceptable biological catch/annual catch limit (ABC/ACLs), Days at Sea (DAS), access area allocations for Limited Access (LA) and Limited Access General Category (LAGC), Total Allowable Catch (TAC) for Northern Gulf of Maine (NGOM) management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2019 and default specifications for fishing year 2020. Review standard default measures developed through Framework 30 and make final recommendations. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: November 6, 2018.

**Tracey L. Thompson,**

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

[FR Doc. 2018–24593 Filed 11–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

**DATES:** *Comments must be received on or before:* December 9, 2018.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

*Service Type:* Total Facility Management Service

*Mandatory for:* U.S. Coast Guard, U.S. Coast Guard Training Center (TRACEN), U.S. Coast Guard Training Center, Yorktown, VA
*Mandatory Source of Supply:* Skookum Educational Programs, Bremerton, WA
*Contracting Activity:* U.S. Coast Guard SILC BSS

**Deletions**

The following products and services are proposed for deletion from the Procurement List:

*Products*

*NSN(s)—Product Name(s):*
6645–01–623–8819—Clock, Wall, Quartz, Mahogany, 15.5″ Diameter
6645–01–623–8820—Clock, Wall, Self-Set, Mahogany, 15.5″ Diameter
6645–01–623–8821—Clock, Wall, Quartz, Custom Logo, Mahogany, 15.5″ Diameter
6645–01–623–8822—Clock, Wall, Self-Set, Custom Logo, Mahogany, 15.5″ Diameter
6645–01–557–3159—Clock, Wall, Self-Set, Bronze, 8″ Diameter
6645–01–557–8132—Clock, Wall, Self-Set, Custom Logo, Bronze, 8″ Diameter
*Mandatory Source of Supply:* Chicago Lighthouse Industries, Chicago, IL
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2), NEW YORK, NY

*NSN(s)—Product Name(s):*
MR 440—Candle, Soy, Vanilla Cupcake Scented, 8.5oz
MR 441—Candle, Soy, Berry Fusion Scented, 8.5oz
MR 442—Candle, Soy, Cinnamon Apple Scented, 8.5oz
MR 444—Candle, Soy, Macintosh Apple Scented, 8.5oz
MR 446—Candle, Soy, Caribbean Breezes Scented, 8.5oz
MR 357—Tumblers, Red, White and Blue, Includes Shipper 10357
*Mandatory Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* Defense Commissary Agency

*Services*

*Service Type:* Janitorial/Custodial Service
*Mandatory for:*
U.S. Army Reserve Center: 5200 Wissahickon Avenue, Philadelphia, PA
U.S. Army Reserve Center: 500 W. 24th Street, Chester, PA
*Mandatory Source of Supply:* The Chimes, Inc., Baltimore, MD
*Contracting Activity:* Dept of the Army, W40M Northeregion Contract OFC

*Service Type:* Janitorial/Custodial Service
*Mandatory for:* U.S. Army Reserve Center: 1750 East 29th Street Tucson, AZ
*Mandatory Source of Supply:* Catholic Community Services of Southern Arizona, Tucson, AZ
*Contracting Activity:* Dept of the Army, W40M Northeregion Contract OFC

*Service Type:* Grounds Maintenance Service
*Mandatory for:* Naval Support Activity: 2300 General Meyers Avenue 2300 General Meyers Avenue Algiers, LA
*Mandatory Source of Supply:* Goodworks, Inc., New Orleans, LA
*Contracting Activity:* Dept of the Navy, NAVFAC Southeast

*Service Type:* Janitorial/Custodial Service
*Mandatory for:* Navy Aviation Supply Office: Buildings 3A, 3B, 3C, 3D, 4A, 5A, 5B, 36/1, 36/2, 36/3, and 11 Trailers Philadelphia, PA
*Mandatory Source of Supply:* The Chimes, Inc., Baltimore, MD
*Contracting Activity:* Dept of the Navy, U.S. Fleet Forces Command

*Service Type:* Facilities Maintenance Service
*Mandatory for:* Mississippi Air National Guard: ANG CRTC/LGC 4715 Hewes Avenue, Building 1 Gulfport, MS
*Mandatory Source of Supply:* Mississippi Goodworks, Inc., Gulfport, MS
*Contracting Activity:* Dept of Defense, DOD/OFF of Secretary of DEF (EXC MIL DEPTS)

*Service Type:* Janitorial/Custodial Service
*Mandatory for:* New Orleans Naval Support Activity: (basewide except Commissary & Exchange facilities) New Orleans, LA
*Mandatory Source of Supply:* Goodworks, Inc., New Orleans, LA
*Contracting Activity:* Dept of the Navy, NAVFAC Southeast

*Service Type:* Grounds Maintenance Service
*Mandatory for:* Fort Ord Fort Ord, CA
*Mandatory Source of Supply:* UNKNOWN
*Contracting Activity:* Dept of the Army, W40M Northeregion Contract OFC

**Michael R. Jurkowski,**

*Business Management Specialist, Business Operations.*

[FR Doc. 2018–24584 Filed 11–8–18; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to and deleted from the Procurement List:* December 9, 2018.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

**SUPPLEMENTARY INFORMATION:**

**Additions**

On 4/27/2018 (83 FR 82), 5/4/2018 (83 FR 87), and 9/21/2018 (83 FR 184), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following products and service are added to the Procurement List:

*Products*

*NSN(s)—Product Name(s):*
2540–01–454–0415—Blade, Refill, Windshield Wiper, HMMW Vehicle, 20″L
2540–01–377–3125—Arm, Windshield Wiper, HMMW Vehicle, 20″L
2540–01–271–8026—Blade, Windshield Wiper, HMMW Vehicle, 16″L
2540–01–262–7708—Blade, Windshield Wiper, HMMW Vehicle, 20″L
2540–00–248–4603—Blade, Windshield Wiper, HMMW Vehicle, 18″L
*Mandatory Source of Supply:* Center for the Visually Impaired Foundation, Inc., Atlanta, GA
*Mandatory for:* 100% of the requirement of the Department of Defense
*Contracting Activity:* Defense Logistics Agency Land and Maritime

*Distribution:* C-List
*NSN(s)—Product Name(s):* 5975–00–985–6630—Strap, Tie Down, Electrical Component
*Mandatory for:* Broad Government Requirement
*Mandatory Source of Supply:* North Central Sight Services, Inc., Williamsport, PA
*Contracting Activity:* Defense Logistics Agency Aviation
*Distribution:* B-List

*Service*

*Service Type:* Mailroom Service
*Mandatory for:* Centers for Disease Control & Prevention National Center for Health Statistics 3311 Toledo Road, Hyattsville, MD
*Mandatory Source of Supply:* ServiceSource, Inc., Oakton, VA
*Contracting Activity:* Centers for Disease Control and Prevention, CDC—Pittsburg

**Deletions**

On 10/5/2018 (83 FR 194), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

*End of Certification*

Accordingly, the following products are deleted from the Procurement List:

*Products*

*NSN(s)—Product Name(s):*
8410–00–NIB–0002 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Long
8410–00–NIB–0003 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Long
8410–00–NIB–0004 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 X-Short
8410–00–NIB–0005 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 X-Short
8410–00–NIB–0006 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Short
8410–00–NIB–0007 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Long
8410–01–536–2974 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Short
8410–01–536–2977 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Regular
8410–01–536–2980 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 X-Short
8410–01–536–2982 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Short
8410–01–536–2994 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Regular
8410–01–536–3000 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 X-Short
8410–01–536–3760 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Short
8410–01–536–3763 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Regular
8410–01–536–3769 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 X-Short
8410–01–536–3772 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Short
8410–01–536–3776 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Regular
8410–01–536–3779 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Long
8410–01–536–3782 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Long
8410–01–536–3784 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 X-Short
8410–01–536–3787 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Short
8410–01–536–3789 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Regular
8410–01–536–3792 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Long
8410–01–536–3793 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 X-Short
8410–01–536–3795 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Short
8410–01–536–3797 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Regular
8410–01–536–3799 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Long
8410–01–536–3800 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 X-Short
8410–01–536–3803 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Short
8410–01–536–3804 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Regular
8410–01–536–3805 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Long
8410–01–536–3807 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 X-Short
8410–01–536–3808 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Short
8410–01–536–3812 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Regular
8410–01–536–3814 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Long
8410–01–536–3816 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Short
8410–01–536–3819 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Regular
8410–01–536–3822 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Long
8410–01–536–3825 Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Regular
8415–00–NIB–0489 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Long
8415–00–NIB–0490 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Short
8415–00–NIB–0491 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Short
8415–00–NIB–0492 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 X-Short
8415–00–NIB–0493 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 X-Long
8415–00–NIB–0494 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 X-Long
8415–01–535–4170 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–4134 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Short
8415–01–536–4170 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–4178 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Regular
8415–01–536–4180 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Long
8415–01–536–4182 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Short
8415–01–536–4184 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Short
8415–01–536–4188 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Regular

8415–01–536–4189 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Long
8415–01–536–4192 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Long
8415–01–536–4193 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Short
8415–01–536–4197 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Short
8415–01–536–4224 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Regular
8415–01–536–4227 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Long
8415–01–536–4237 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Long
8415–01–536–4239 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Short
8415–01–536–4241 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Short
8415–01–536–4367 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Regular
8415–01–536–4369 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Long
8415–01–536–4571 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Long
8415–01–536–4572 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Short
8415–01–536–4573 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Short
8415–01–536–4574 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Regular
8415–01–536–4576 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Long
8415–01–536–4577 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Long
8415–01–536–4578 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Short
8415–01–536–4581 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Short
8415–01–536–4583 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Regular
8415–01–536–4584 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Long
8415–01–536–4585 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Long
8415–01–536–4586 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Short
8415–01–536–4588 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 X-Short
8415–01–536–4590 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Regular
8415–01–536–4591 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–01–536–4592 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Long
8415–01–536–4593 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Short
8415–01–536–4596 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Regular
8415–01–536–4600 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Long
8415–01–536–4606 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Long
8415–01–536–4639 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Short
8415–01–536–4640 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Regular
8415–01–536–4651 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Long
8415–01–536–4674 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Short
8415–01–536–4682 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Regular
8415–01–536–4712 Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Long
8410–00–NIB–0008 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 X-Short
8410–00–NIB–0009 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Long
8410–00–NIB–0010 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 X-Short
8410–00–NIB–0011 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 X-Short
8410–00–NIB–0012 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Short
8410–00–NIB–0015 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Long
8410–00–NIB–0016 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 X-Short
8410–00–NIB–0017 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Short
8410–01–536–2711 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Regular
8410–01–536–2714 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 X-Short
8410–01–536–2715 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Regular
8410–01–536–2718 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 X-Short
8410–01–536–2719 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Short
8410–01–536–2720 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Regular
8410–01–536–2721 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Long
8410–01–536–2723 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 X-Short
8410–01–536–2725 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Short
8410–01–536–2734 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Regular
8410–01–536–2736 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Long
8410–01–536–2739 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 X-Short
8410–01–536–2740 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Short
8410–01–536–2742 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Regular
8410–01–536–2744 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Long
8410–01–536–2746 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 X-Short
8410–01–536–2748 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Short
8410–01–536–2749 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Regular
8410–01–536–2752 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Long
8410–01–536–2754 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 X-Short
8410–01–536–2756 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Short
8410–01–536–2760 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Regular
8410–01–536–2761 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Long
8410–01–536–2765 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 X-Short
8410–01–536–2766 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Short
8410–01–536–2770 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Regular
8410–01–536–2771 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Long
8410–01–536–2773 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Short
8410–01–536–2774 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Regular
8410–01–536–2778 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Long

8410–01–536–2780 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Regular
8410–01–536–2783 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Long
8410–01–536–2785 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Regular
8410–01–536–2801 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Short
8410–01–NIB–0014 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Long
8415–00–NIB–0495 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Short
8415–00–NIB–0496 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Long
8415–00–NIB–0497 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Short
8415–00–NIB–0498 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–00–NIB–0499 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Short
8415–00–NIB–0500 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Short
8415–00–NIB–0501 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Long
8415–00–NIB–0502 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Long
8415–01–536–3759 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Short
8415–01–536–3774 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Regular
8415–01–536–3777 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Long
8415–01–536–3791 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 X-Long
8415–01–536–3794 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Short
8415–01–536–3809 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 X-Short
8415–01–536–3817 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Regular
8415–01–536–3821 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Long
8415–01–536–3823 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 X-Long
8415–01–536–3826 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–3830 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Short
8415–01–536–3833 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Regular
8415–01–536–3836 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Long
8415–01–536–3844 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Long
8415–01–536–3846 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Short
8415–01–536–3849 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Short
8415–01–536–3855 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Regular
8415–01–536–3869 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Long
8415–01–536–3874 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Long
8415–01–536–3880 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Short
8415–01–536–3890 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Short
8415–01–536–3893 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Short
8415–01–536–3903 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Regular
8415–01–536–3905 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Long
8415–01–536–3912 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Long
8415–01–536–3916 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Short
8415–01–536–3920 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Short
8415–01–536–3927 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Regular
8415–01–536–3935 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Long
8415–01–536–4021 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Long
8415–01–536–4067 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Short
8415–01–536–4071 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Regular
8415–01–536–4073 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Long
8415–01–536–4075 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Long
8415–01–536–4077 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Short
8415–01–536–4081 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Regular
8415–01–536–4088 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Long
8415–01–536–4102 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Regular
8415–01–536–4103 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Short
8415–01–536–4109 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–01–536–4111 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Regular
8415–01–536–4121 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Long
8410–01–536–2709 Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Short
8415–01–536–3758 Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 X-Short

*Mandatory Sources of Supply:* ReadyOne Industries, Inc., El Paso, TX, Blind Industries & Services of Maryland, Baltimore, MD Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC, LC Industries, Inc., Durham, NC, Goodwill Industries of South Florida, Inc., Miami, FL

*Contracting Activity:* Defense Logistics Agency Troop Support

*NSN(s)—Product Name(s):* 7045–01–269–8115—Tape, Electronic Data Processing 7045–01–321–0642—Tape, Electronic Data Processing

*Mandatory Source of Supply:* North Central Sight Services, Inc., Williamsport, PA

*Contracting Activity:* Defense Logistics Agency Troop Support

*NSN(s)—Product Name(s):*
7110–01–657–7729—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 47.5″ x 35″
7110–01–657–7733—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 37.5″ x 23″
7110–01–657–7738—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 12″ x 20.5″

*Mandatory Source of Supply:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

*Contracting Activity:* General Services Administration, Philadelphia, PA

*NSN(s)—Product Name(s):* 6515–00–NIB–0227—Aloud Audio Labels

*Mandatory Source of Supply:* Central Association for the Blind & Visually Impaired, Utica, NY

*Contracting Activity:* Department of Veterans Affairs, Strategic Acquisition Center

*NSN(s)—Product Name(s):* 8465–00–001–6471—(Nylon cloth)

*Mandatory Sources of Supply:* Alabama Industries for the Blind, Talladega, AL, Georgia Industries for the Blind, Bainbridge, GA, Envision, Inc., Wichita, KS, RLCB, Inc., Raleigh, NC, PA, Virginia Industries for the Blind, Charlottesville, VA

*Contracting Activity:* Defense Logistics Agency Troop Support

*NSN(s)—Product Name(s):* 8445–01–242–1009—Necktab, Womens Shirt

*Mandatory Source of Supply:* BSW, Inc.,

Butte, MT

*Contracting Activity:* Defense Logistics Agency Troop Support

**Michael R. Jurkowski,**

*Business Management Specialist, Business Operations.*

[FR Doc. 2018–24583 Filed 11–8–18; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services will take place.

**DATES:** Day 1—Open to the public Tuesday, December 11, 2018 from 8:00 a.m. to 11:45 a.m. Day 2—Open to the public Wednesday, December 12, 2018 from 8:00 a.m. to 11:00 a.m.

**ADDRESSES:** The address of the open meeting is the Hilton Alexandria—Mark Center, 5000 Seminary Rd., Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Colonel Toya J. Davis, U.S. Army, (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *toya.j.davis.mil@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Website: *http://dacowits.defense.gov*. The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

*Purpose of the Meeting:* The purpose of the meeting is for the DACOWITS to receive briefings and updates relating to their current work. The meeting will open with the Designated Federal Officer (DFO) giving a status update on the DACOWITS' requests for information. Day one will start with two separate briefings from the Military Services on the following topics: Gender Representation Among Instructors/Trainers; and Breastfeeding and Lactation Support. There will be a Public Comment period at the end of day one. The second day of the meeting will open with a briefing from Military Services regarding their Physical Fitness Tests. This will be followed by a briefing by DoD on Childcare Resources. Lastly the DACOWITS will hold an awards ceremony for departing members.

*Agenda:* Tuesday, December 11, 2018, from 8:00 a.m. to 11:45 a.m.—Welcome, Introductions, and Announcements; Request for Information Status Update; Briefings and DACOWITS discussion on: Gender Representation Among Instructors/Trainers; Breastfeeding and Lactation Support; and a Public Comment period. Wednesday, December 12, 2018, from 8:00 a.m. to 11:00 a.m.—Welcome and Announcements; Briefing and DACOWITS discussion on the Military Services' Physical Fitness Tests; Briefing by DoD on Childcare Resources; and an Awards Ceremony.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

*Written Statements:* Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written or oral statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Monday, December 3, 2018 to Mr. Robert Bowling (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. If a written statement is not received by Monday, December 3, 2018, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DACOWITS. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the DFO will determine if the requesting persons are permitted to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: November 5, 2018.

**Aaron T. Siegel,**

*Alternate OSD .Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–24519 Filed 11–8–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

**[Case No. 2018–009; EERE–2018–BT–WAV–0013]**

### Notice of Petition for Waiver of TCL Air Conditioner (zhongshan) Co., Ltd. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure, and Notice of Grant of Interim Waiver

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petition for waiver and grant of an interim waiver, and request for comments.

**SUMMARY:** This notice announces receipt of and publishes a petition for waiver from TCL air conditioner (zhongshan) Co., Ltd. (''TCL AC''), which seeks a waiver from the U.S. Department of Energy (''DOE'') test procedure for determining the efficiency of central air conditioners (''CACs'') and heat pumps (''HPs''). TCL AC seeks to use an alternate test procedure to address issues involved in testing certain basic models identified in its petition. According to TCL AC, the DOE test procedure does not include a method for testing specified CAC and HP basic models that use variable-speed compressors and are matched with a coil-only indoor unit (hereafter referred to as ''variable-speed coil-only single-split systems''). TCL AC requests that it be permitted to test its variable-speed coil-only single-split systems with the cooling full-load air volume rate used as both the cooling intermediate and minimum air volume rates, and the heating full-load air volume rate used as the heating intermediate air volume rate. This notice announces that DOE grants TCL AC an interim waiver from the DOE CAC and HP test procedure for its specified basic models, subject to use of the alternate test procedure as set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning TCL AC's petition and the alternate test procedure.

**DATES:** DOE will accept comments, data, and information with respect to the TCL AC petition until December 10, 2018.

**ADDRESSES:** Interested persons are encouraged to submit comments using

the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by case number ''2018–009'' and Docket number ''EERE–2018–BT–WAV–0013,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: TCL2018WAV0013@ee.doe.gov.* Include the case number *[Case No. 2018–009]* in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2018–009, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

*Docket:* The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2018-BT-WAV-0013.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucy deButts, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes CACs and HPs. (42 U.S.C. 6292(a)(3)) Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B requires the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for CACs and HPs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix M (referred to in this notice as ''appendix M'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

The waiver process also allows DOE to grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

## II. TCL AC's Petition for Waiver of Test Procedure and Application for Interim Waiver

On July 10, 2018, TCL AC filed a petition for waiver and an application for interim waiver from the CAC and HP test procedure set forth in Appendix M. According to TCL AC, Appendix M does not include provisions for determining cooling intermediate air volume rate, cooling minimum air volume rate, and heating intermediate air volume rate for the variable-speed coil-only single-split systems specified in its petition. Consequently, TCL AC asserted that it cannot test or rate these systems in accordance with the DOE test procedure. TCL AC stated that its variable-speed outdoor units are non-communicative systems (*i.e.,* the outdoor unit does not communicate with the indoor unit) for which compressor speed varies based only on controls located on the outdoor unit and the indoor unit maintains a constant indoor blower fan speed.

TCL AC seeks to use an alternate test procedure to test and rate specific CAC and HP basic models of its variable-speed coil-only single-split systems, which would specify the use of cooling full-load air volume rates as determined in section 3.1.4.1.1.c of Appendix M as cooling intermediate and cooling minimum air volume rates, and would specify the use of heating full-load air volume rates as determined in section 3.1.4.4.1.a of Appendix M as heating intermediate air volume rate.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

TCL AC also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2).

DOE understands that absent an interim waiver, the specified variable-speed coil-only single-split models that are subject of the waiver cannot be tested under the existing test procedure because Appendix M does not include provisions for determining certain air volume rates for variable-speed coil-only single-split systems. Typical variable-speed single-split systems have a communicating system, *i.e.,* the outdoor units and indoor units communicate and indoor unit air flow varies based on the operation of the outdoor unit. However, as presented in TCL AC's petition, its variable-speed outdoor units are non-communicative systems and the indoor blower section maintains a constant indoor blower fan speed.

## III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, and after consideration of public comments on the petition, DOE will consider setting an alternate test procedure for the equipment identified by TCL AC in a subsequent Decision and Order.

DOE recently granted to GD Midea Heating & Ventilating Equipment Co., Ltd. (''GD Midea'') an interim waiver from the DOE CAC and HP test procedure for specific basic models, subject to use of an alternate test procedure. 83 FR 24767. In TCL AC's petition, TCL AC requests that it be allowed to use the same alternate test procedure as that granted to GD Midea. Specifically, TCL AC requests that specified basic models listed in the petition be tested according to the test procedure for central CACs and HPs prescribed by DOE at Appendix M, except that for coil-only systems, the cooling full-load air volume rate is also used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate is used as the heating intermediate air volume rate.

## IV. Summary of Grant of an Interim Waiver

DOE has reviewed TCL AC's application for interim waiver, the alternate procedure requested by TCL AC, and public-facing materials (*e.g.,* marketing materials, product specification sheets, and installation manuals) for the units identified in its petition. The basic models specified in TCL AC's application appear to contain similar technology and barriers to testing as those specified in the GD Midea interim waiver order. The public-facing materials that DOE reviewed support TCL AC's assertion that the units it identifies are installed as variable-speed coil-only systems, in which the indoor fan speed remains constant at full and part-load operation. Using the cooling full-load air volume rate for the cooling intermediate and cooling minimum air volume rates, and the heating full load air volume rate as the heating intermediate air volume rate appears appropriate because there is no variability in indoor fan speed. Based on this review, the alternate test procedure appears to allow for the accurate measurement of efficiency of the specified basic models, while alleviating the testing problems associated with TCL AC's implementation of CAC and HP testing for the basic models specified in TCL AC's petition. Consequently, TCL AC's petition for waiver will likely be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant TCL AC immediate relief pending a determination on the petition for waiver.

For the reasons stated above, DOE has granted an interim waiver to TCL AC for the specified CAC and HP basic models in TCL AC's petition. Therefore, DOE has issued an *order,* stating:

(1) TCL AC must test and rate the TCL air conditioner (zhongshan) Co., Ltd. brand and Ecoer Inc. brand single-split CAC and HP basic models TCE–36HA/DV20 and TCE–60HA/DV20, which are comprised of the individual combinations listed below,[3] using the alternate test procedure set forth in paragraph (2):

| Brand | Basic model No. | Outdoor unit | Indoor unit |
|---|---|---|---|
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–2430D6HWA/DVOE(01). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–2430D6HWA/DVOE(02). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–3036D6HWA/DVOE(02). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–2430D6HWA/DV2I(01). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–2430D6HWA/DV2I(02). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–3036D6HWA/DV2I(01). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–3036D6HWA/DV2I(02). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–36HA/DV20 | TCE–36HA/DV20 | TCE–3036D6HWA/DV2I(03). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4248D6HWA/DVOE(03). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4860D6HWA/DVOE(03). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4860D6HWA/DVOE(04). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4248D6HWA/DV2I(02). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4248D6HWA/DV2I(03). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4248D6HWA/DV2I(04). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4860D6HWA/DV2I(03). |
| TCL air conditioner (zhongshan) Co., Ltd ..... | TCE–60HA/DV20 | TCE–60HA/DV20 | TCE–4860D6HWA/DV2I(04). |
| Ecoer Inc ..... | TCE–36HA/DV20 | EODA18H–2436 | GNC2430APT. |
| Ecoer Inc ..... | TCE–36HA/DV20 | EODA18H–2436 | GNC2430BPT. |
| Ecoer Inc ..... | TCE–36HA/DV20 | EODA18H–2436 | GNC3036BPT. |

[3] The specified basic models contain individual combinations, which do not specify a particular air mover, and that each consist of an outdoor unit that (1) uses a variable speed compressor matched with a coil-only indoor unit, and (2) is designed to operate as part of a non-communicative system in which the compressor speed varies based only on controls located in the outdoor unit such that the indoor blower unit maintains a constant indoor blower fan speed.

| Brand | Basic model No. | Outdoor unit | Indoor unit |
|---|---|---|---|
| Ecoer Inc | TCE–36HA/DV20 | EODA18H–2436 | EACT2430A. |
| Ecoer Inc | TCE–36HA/DV20 | EODA18H–2436 | EACT2430B. |
| Ecoer Inc | TCE–36HA/DV20 | EODA18H–2436 | EACT3036A. |
| Ecoer Inc | TCE–36HA/DV20 | EODA18H–2436 | EACT3036B. |
| Ecoer Inc | TCE–36HA/DV20 | EODA18H–2436 | EACT3036C. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | GNC4248CPT. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | GNC4860CPT. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | GNC4860DPT. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | EACT4248B. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | EACT4248C. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | EACT4248D. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | EACT4860C. |
| Ecoer Inc | TCE–60HA/DV20 | EODA18H–4860 | EACT4860D. |

(2) The alternate test procedure for the TCL AC basic models identified in paragraph (1) is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, Appendix M, except that, for coil-only combinations: The cooling full-load air volume rate as determined in section 3.1.4.1.1.c of Appendix M shall also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate as determined in section 3.1.4.4.1.a of Appendix M shall also be used as the heating intermediate air volume rate, as detailed below. All other requirements of Appendix M and DOE's regulations remain applicable.

In 3.1.4.2, *Cooling Minimum Air Volume Rate,* include:

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.3, *Cooling Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling intermediate air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.6, *Heating Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the heating intermediate air volume rate is the same as the heating full-load air volume rate determined in section 3.1.4.4.1.a.

(3) *Representations.* TCL AC is permitted to make representations about the efficiency of basic models identified in paragraph (1) for compliance, marketing, or other purposes only to the extent that the basic model has been tested in accordance with the provisions set forth in the alternate test procedure and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.16 and 10 CFR part 430, subpart B, Appendix M.

(4) This interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27.

(5) If TCL AC makes any modifications to the controls or configurations of these basic models, the interim waiver would no longer be valid and TCL AC would either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this interim waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, TCL AC may request that DOE rescind or modify the interim waiver if TCL AC discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this interim waiver does not release TCL AC from the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future basic models that may be manufactured by the petitioner. TCL AC may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of central air conditioners and heat pumps. Alternatively, if appropriate, TCL AC may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

## V. Request for Comments

DOE is publishing TCL AC's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv). The petition did not identify any information as confidential business information. The petition includes a suggested alternate test procedure, as specified in section III of this notice, to determine the energy consumption of TCL AC's specified CAC and HP basic models. DOE may consider including the alternate procedure specified in the Interim Waiver Order in a subsequent Decision and Order.

DOE invites all interested parties to submit in writing by December 10, 2018, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Kevin Zheng, Certification Engineer, TCL Air Conditioner (zhongshan) Co., Ltd., No. 59. Nantou Road West, Nantou, Zhongshan, Guangdong, P.R. China, *kt_zhengkai@tcl.com.*

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents

attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signed in Washington, DC, on November 1, 2018.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

TCL air conditioner (zhongshan) Co., Ltd.
No. 59. Nantou Road West, Nantou,
Zhongshan, Guangdong, P.R. China
July 19, 2018

Lucy deButts
U.S. Department of Energy
Building Technologies Program, Mail Stop EE–5B
1000 Independence Avenue. SW
Washington DC 20585–0121

Submitted via email to the following address: *AS_Waiver_Requests@ee.doe.gov*

Waiver Petition for TCL AC's variable speed coil-only single-split systems.

Dear Ms. Lucy Debutts:

Pursuant to 10 CFR 430.27, TCL air conditioner (zhongshan) Co., Ltd. (hereinafter abbreviated as ''TCL AC'') respectfully submits this waiver petition on its non-communicative variable speed systems with coil-only configuration listed in Table 3–1. The scope of the test procedure for central air conditioners (CACs) and heat pumps (HPs) found in Appendix M to Subpart B of 10 CFR part 430 (hereinafter referred to as ''Appendix M'') includes single-split air-conditioners and heat pumps that are coil-only systems with a variable-speed compressor (hereinafter referred to as ''variable-speed coil-only single-split systems''). However, whereas Appendix M provides some provisions to test variable-speed coil-only single-split system overall, it does not provide specific coverage for determining cooling intermediate air volume rate, cooling minimum air volume rate and heating intermediate air volume rate for these products. It makes some difficulties in applying Appendix M to test variable-speed coil-only single-split systems.

TCL AC seeks a test procedure waiver to apply its variable-speed coil-only single-split systems using the alternative test procedure proposed by GD Midea Heating & Ventilating Equipment Co., Ltd. (GD Midea) presenting in section II of this petition. We hereby also request a waiver for TCL AC's variable-speed coil-only single-split systems. The granting of waiver is very crucial to us as well. Because it will allow us to accurately rate, certify, and provide US consumers with highly efficient and smart variable-speed coil-only single-split systems.

*I. TCL air conditioner (zhongshan) CO., Ltd.*

TCL air conditioner (zhongshan) Co., Ltd. is a division of the TCL group founded in 1981. TCL group is one of the world's leading manufacturers focusing on MULTI-MEDIA, CSOT, COMMUNICATION, TONLY ELECTRONICS and HVAC equipment with 21 manufacturing & processing bases, 80 sales organizations and 10 strategic partners around the world. TCL AC, one of the leading air conditioner manufacturers with capability of producing all kinds of residential air conditioners, commercial air conditioners, dehumidifiers and compressors, was established in 1999. TCL AC has been ranking the 3rd company of China air conditioner export since 2014 and providing true intelligent air conditioners based on inverter variable speed technology. Through its R&D division, TCL strives to develop and manufacture the most energy-efficient CACs and HPs for residential application, including high efficiency variable speed single-split systems.

*II. Background*

Variable speed compressor technology has been proven to be an effective way to improve both the seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) for air-conditioning products. But most of residential CACs and HPs installed in the US market are single or two-stage systems. Undoubtedly, Inverter variable speed CACs and HPs shall be a trend for consumer updates in the next decades. Besides Midea/Bosch inverter variable-speed single-split systems, the vast majority variable speed split systems require a proprietary communicating method and exclusively works with a specific blower-coil unit from the same manufacturer. To provide US customers a more convenient energy-saving retrofit application of their single or two-stage systems, TCL AC's variable speed outdoor condensing units are also designed as non-communicative control systems. What's more, Integrated and safety protection PCB design makes TCL AC's variable-speed single-split systems easy to install and service with incredible comfort.

The scope of Appendix M includes variable-speed coil-only single-split systems. However, Appendix M lacks coverage for manufacturers to test these systems to the fullest extent of the test procedure. For example, Appendix M does not provide specific coverage for these products to determine cooling intermediate air volume rate, cooling minimum air volume rate and heating intermediate air volume rate. So it's impossible for manufacturers to test a variable-speed system in a coil-only configuration in full compliance with the test procedure. More specifically, Table 8 and Table 14 present in Appendix M provide respectively cooling and heating mode test conditions for units having a variable-speed compressor. These tables prescribe six air volume rates (cooling minimum, cooling intermediate, cooling full-load, heating minimum, heating intermediate, heating full-load) at which units with variable speed compressor need to be tested. These six air volume rates are then determined using sections 3.1.4.1 through 3.1.4.6. However, problem arises when trying to determine cooling minimum, cooling intermediate, and heating intermediate for variable-speed coil-only single-split systems, as respective sections 3.1.4.2, 3.1.4.3 and 3.1.4.6 do not provide coverage for these systems.

Fortunately, GD Midea had proposed an alternative test procedure that provides additional coverage to Appendix M for variable-speed coil-only single-split systems meanwhile preserving the spirit and intent of the test procedure. Note that GD Midea has only evaluated and confirmed the suitability and practicability on its products in which are listed Section III that have the characteristics: 1) No communication between the variable-speed outdoor condensing unit and the indoor unit; 2)The air volume rates of indoor units remain constant at all time. Considering the unique technical characteristics of these non-communicative variable speed systems, GD Midea had proposed the alternative test procedure to determine the six air volume rates in Table 8 and Table 14 as follow:

- Cooling full-load air volume rate: Determined using 3.1.4.1.1.c
- Cooling intermediate air volume rate: Use the cooling full-load air volume rate as the cooling intermediate air volume rate. Use the final control settings as determined when setting the cooling full-load air volume rate, if necessary to reset to the cooling full-load air volume rate obtained in section 3.1.4.1.1.c
- Cooling minimum air volume rate: Use the cooling full-load air volume rate as the cooling minimum air volume rate. Use the final control settings as determined when setting the cooling full-load air volume rate, if necessary to reset to the cooling full-load air volume rate obtained in section 3.1.4.1.1.c
- Heating full-load air volume rate: Determined using 3.1.4.4.1.a
- Heating intermediate air volume rate: Use the heating full-load air volume rate as the heating intermediate air volume rate. Use the final control settings as determined when setting the heating full-load air volume rate, if necessary to reset to the heating full-load air volume rate obtained in section 3.1.4.4.1.a
- Heating minimum air volume rate: Determined using 3.1.4.5.1.a

DOE has granted the waiver for GD Midea from DOE test procedure for basic models MOVA–36HDN1–M18M and MOVA–60HDN1–M18M, which contain individual combinations as below table. Each combination consists of an outdoor unit that uses a variable speed compressor matched with a coil-only indoor unit and is designed to operate as part of a non-communicative system in which the compressor speed varies based only on controls located in the outdoor unit and the indoor blower unit maintains a constant indoor blower fan speed. According to docket number EERE–2017–BT–WAV–0060, for coil-only combinations with non-communicative inverter variable speed condensing units: the cooling full-load air volume rate as determined in section 3.1.4.1.1.c of Appendix M shall also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate as determined in section 3.1.4.4.1.a of Appendix M shall also be used as the heating intermediate air volume rate.

| GD Midea Heating & Ventilating Equipment Co., Ltd. (Brand) | | | Bosch Thermotechnology Corp (Brand) | | |
|---|---|---|---|---|---|
| Basic model No. | Outdoor unit | Indoor unit | Basic model No. | Outdoor unit | Indoor unit |
| MOVA–36HDN1–M18M | MOVA–36HDN1–M18M | MC**2430ANTF | MOVA–36HDN1–M18M | BOVA–36HDN1–M18M | BMA*2430ANTD |
| MOVA–36HDN1–M18M | MOVA–36HDN1–M18M | MC**2430BNTF | MOVA–36HDN1–M18M | BOVA–36HDN1–M18M | BMA*2430BNTD |
| MOVA–36HDN1–M18M | MOVA–36HDN1–M18M | MC**3036ANTD | MOVA–36HDN1–M18M | BOVA–36HDN1–M18M | BMA*3036ANTD |
| MOVA–36HDN1–M18M | MOVA–36HDN1–M18M | MC**3036BNTD | MOVA–36HDN1–M18M | BOVA–36HDN1–M18M | BMA*3036BNTD |
| MOVA–36HDN1–M18M | MOVA–36HDN1–M18M | MC**3036CNTD | MOVA–36HDN1–M18M | BOVA–36HDN1–M18M | BMA*3036CNTD |
| MOVA–60HDN1–M18M | MOVA–60HDN1–M18M | MC**4248BNTF | MOVA–60HDN1–M18M | BOVA–60HDN1–M18M | BMA*4248BNTF |
| MOVA–60HDN1–M18M | MOVA–60HDN1–M18M | MC**4248CNTF | MOVA–60HDN1–M18M | BOVA–60HDN1–M18M | BMA*4248CNTF |
| MOVA–60HDN1–M18M | MOVA–60HDN1–M18M | MC**4248DNTF | MOVA–60HDN1–M18M | BOVA–60HDN1–M18M | BMA*4248DNTF |
| MOVA–60HDN1–M18M | MOVA–60HDN1–M18M | MC**4860CNTF | MOVA–60HDN1–M18M | BOVA–60HDN1–M18M | BMA*4860CNTF |
| MOVA–60HDN1–M18M | MOVA–60HDN1–M18M | MC**4860DNTF | MOVA–60HDN1–M18M | BOVA–60HDN1–M18M | BMA*4860DNTF |

*III. Basic Models for Waiver Application*

TCL AC is requesting a waiver to test its single-split CACs and HPs outdoor condensing unit basic models equipping variable speed compressors, with which match coil-only indoor units. Using the alternative test procedure proposed by GD Midea described in section V of this petition.

Specifically, TCL AC waiver request covers the following basic models.

TABLE 3–1—WAIVER APPLYING BASIC MODELS

| TCL air conditioner (zhongshan) Co., Ltd. (Brand) | | | Ecoer Inc. (Brand) | | |
|---|---|---|---|---|---|
| Basic model No. | Outdoor unit | Indoor unit | Basic model No. | Outdoor unit | Indoor unit |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–2430D6HWA/DVOE(01) | TCE–36HA/DV2O | EODA18H–2436 | GNC2430APT. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–2430D6HWA/DVOE(02) | TCE–36HA/DV2O | EODA18H–2436 | GNC2430BPT. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–3036D6HWA/DVOE(02) | TCE–36HA/DV2O | EODA18H–2436 | GNC3036BPT. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–2430D6HWA/DV2I(01) | TCE–36HA/DV2O | EODA18H–2436 | EACT2430A. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–2430D6HWA/DV2I(02) | TCE–36HA/DV2O | EODA18H–2436 | EACT2430B. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–3036D6HWA/DV2I(01) | TCE–36HA/DV2O | EODA18H–2436 | EACT3036A. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–3036D6HWA/DV2I(02) | TCE–36HA/DV2O | EODA18H–2436 | EACT3036B. |
| TCE–36HA/DV2O | TCE–36HA/DV2O | TCE–3036D6HWA/DV2I(03) | TCE–36HA/DV2O | EODA18H–2436 | EACT3036C. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4248D6HWA/DVOE(03) | TCE–60HA/DV2O | EODA18H–4860 | GNC4248CPT. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4860D6HWA/DVOE(03) | TCE–60HA/DV2O | EODA18H–4860 | GNC4860CPT. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4860D6HWA/DVOE(04) | TCE–60HA/DV2O | EODA18H–4860 | GNC4860DPT. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4248D6HWA/DV2I(02) | TCE–60HA/DV2O | EODA18H–4860 | EACT4248B. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4248D6HWA/DV2I(03) | TCE–60HA/DV2O | EODA18H–4860 | EACT4248C. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4248D6HWA/DV2I(04) | TCE–60HA/DV2O | EODA18H–4860 | EACT4248D. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4860D6HWA/DV2I(03) | TCE–60HA/DV2O | EODA18H–4860 | EACT4860C. |
| TCE–60HA/DV2O | TCE–60HA/DV2O | TCE–4860D6HWA/DV2I(04) | TCE–60HA/DV2O | EODA18H–4860 | EACT4860D. |

These systems have the following characteristics:

1. No communication between the inverter variable-speed outdoor condensing unit and the indoor unit

2. Once the systems have been installed, the air volume rate remains constant at all time.

*IV. Backgrounds for Test Procedure Waiver*

Appendix M prescribes that on or after July 5, 2017 and prior to January 1, 2023, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to appendix M. In addition, ratings referring to Appendix M are used to determine compliance with the provisions of paragraph (c) of 10 CFR 430.32, energy and water conservation standards for air-conditioners and heat pumps.

Given the fact that variable-speed coil-only single-split systems are included in the scope of Appendix M and 10 CFR 430.32, absence of comprehensive coverage for these products in Appendix M hinders manufacturers in

1) establishing ratings in compliance with federal law,

2) determining compliance with DOE's minimum efficiency standards present in 10 CFR 430.32,

3) complying with DOE's certification requirements set forth in 10 CFR 429,

4) distributing these products in commerce.

*V. Technical Justification for Alternative Test Procedure*

TCL AC's variable speed coil-only single-split systems that are going to be listed in Section III of this petition have the similar technical controls to GD Midea, but have a significantly difference from conventional variable speed systems:

- Conventional variable speed single-split systems are typically communicating systems. *Firstly, the outdoor condensing units acquire the states of indoor side through proprietary communication method to control the whole system. Moreover, the indoor unit air volume rates vary according to not only return air temperature and setting temperature of indoor side but also the condensing units' states on some conditions.* TCL AC has noticed that the following manufacturers of single-split residential CACs and HPs offer systems by communication control: Carrier Corporation, Daikin Industries, Lennox International Inc., Nortek Global HVAC, Rheem Sales Company, Trane and York by Johnson Controls.
- TCL AC's variable-speed single-split systems differ from the conventional one descripted above. *No communication is required between indoor unit and outdoor condensing unit, and the indoor air volume rates never vary based on outdoor condensing units' state. The outdoor condensing unit automatically adjusts compressor speeds and fan rotation speeds in response to the different building loads.* This is similar to Midea/Bosch non-communicative variable-speed single-split systems in the current US market.

*VI. Petition for Waiver*

Pursuant to 10 CFR 430.27, TCL AC is requesting an waiver to test TCL AC's variable coil-only systems. Waiver granting is important to ensure that TCL AC can

1) establish ratings in compliance with federal law,

2) determine compliance with DOE's minimum efficiency standards present in 10 CFR 430.32,

3) comply with DOE's certification requirements set forth in 10 CFR 429,

4) distribute its products in commerce and provide US customers with systems that offer ease of use and installation, as well as significant energy-efficiency savings.

*VII. Arguments for Granting Waiver*

TCL AC believes there are strong arguments for granting its petition:

- From a procedural stand-point, TCL AC has identified a void in the current test procedure.
- DOE has granted GD Midea's alternative test procedure that is technically sound, proven, easily justifiable, aligned with the spirit and intent of the existing Appendix M test procedure.
- From a competitive stand-point, the current void in the test procedure puts TCL AC and any other manufacturers whose products may be similar, at a significant competitive disadvantage.
- From a public policy stand-point, the current void in the test procedure prevents TCL AC's distribution in commerce of products that offer US costumers with systems that are easy to install and use, and which provide significant energy-efficiency savings.

*VIII. Conclusion*

TCL AC is the second manufacturer to develop the non-communicative variable-speed outdoor condensing unit. As mentioned above, the main issue both GD Midea and TCL AC encountered when trying to rate the variable-speed coil-only single-split systems to appendix M is the absence of specific provisions for cooling intermediate air volume rate, cooling minimum air volume rate and heating intermediate air volume rate.

For the reasons stated above, TCL AC respectfully requests that DOE grants this petition for waiver to test its variable-speed coil-only single-split systems using Appendix M to Subpart B of 10 CFR part 430 with the supplemental instructions provided by GD Midea in section II of this petition.

Should you have any questions or would like to discuss this request, please contact me at *kt_zhengkai@tcl.com.* We greatly appreciate your attention to this matter.

Sincerely,

Kevin Zheng,

*Certification Engineer.*

*kt_zhengkai@tcl.com.*

[FR Doc. 2018–24548 Filed 11–8–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Case Number 2017–013; EERE–2017–BT–WAV–060]**

## Energy Conservation Program: Decision and Order Granting a Waiver to GD Midea Heating & Ventilating Equipment Co., Ltd. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of decision and order.

**SUMMARY:** The U.S. Department of Energy (''DOE'') gives notice of a Decision and Order (Case Number 2017–013) that grants to GD Midea Heating & Ventilating Equipment Co., Ltd. (''GD Midea'') a waiver from specified portions of the DOE test procedure for determining the energy efficiency of central air conditioners and heat pumps. Under the Decision and Order, GD Midea is required to test and rate specified basic models of its central air conditioners and heat pumps in accordance with the alternate test procedure specified in the Decision and Order.

**DATES:** The Decision and Order is effective on November 9, 2018. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for central air conditioners and heat pumps located at 10 CFR part 430, subpart B, appendix M that addresses the issues presented in this waiver. At such time, GD Midea must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants GD Midea a waiver from the applicable test procedure in 10 CFR part 430, subpart B, appendix M for specified basic models of central air conditioners and heat pumps, provided that GD Midea tests and rates such products using the alternate test procedure specified in the Decision and Order. GD Midea's representations concerning the energy efficiency of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Consistent with 10 CFR 430.27(j), not later than January 8, 2019, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

Signed in Washington, DC, on November 1, 2018.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

### Case #2017–013

### Decision and Order

### I. Background and Authority

The Energy Policy and Conservation Act of 1975 (''EPCA''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency

[1] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated as Part A.

for certain types of consumer products. These products include central air conditioners (CACs) and heat pumps (HPs), the focus of this document. (42 U.S.C. 6292(a)(3)) EPCA also requires the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for CACs and HPs is contained in 10 CFR part 430, subpart B, appendix M.

DOE's regulations set forth at 10 CFR 430.27 contain provisions that allow an interested person to seek a waiver from the test procedure requirements for a particular basic model when the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that either (1) prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

The wavier process also provides that DOE may grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

## II. GD Midea's Petition for Waiver: Assertions and Determinations

By letter dated October 27, 2017, GD Midea filed a petition for waiver and an application for interim waiver from the applicable CAC and HP test procedure set forth in Appendix M.[3] According to GD Midea, Appendix M does not include provisions for determining cooling intermediate air volume rate, cooling minimum air volume rate, and heating intermediate air volume rate for its variable-speed coil-only single-split systems. Consequently, GD Midea stated that it cannot test or rate these systems in accordance with the DOE test procedure. GD Midea stated that its variable-speed outdoor units are non-communicative systems (*i.e.,* the outdoor unit does not communicate with the indoor unit) for which compressor speed varies based only on controls located on the outdoor unit and the indoor unit maintains a constant indoor blower fan speed.

GD Midea seeks to use an alternate test procedure to test and rate specific CAC and HP basic models of its variable-speed coil-only single-split systems, which would specify the use of cooling full-load air volume rates as determined in section 3.1.4.1.1.c of Appendix M as cooling intermediate and cooling minimum air volume rates, and would specify the use of heating full-load air volume rates as determined in section 3.1.4.4.1.a of Appendix M as heating intermediate air volume rate.

On May 30, 2018, DOE published a notice that announced its receipt of the petition for waiver and granted GD Midea an interim waiver. 83 FR 24767. (''Notice of Petition for Waiver''). In the Notice of Petition for Waiver, DOE granted GD Midea's application for an interim waiver for specified basic models of CACs and HPs. In the Notice of Petition for Waiver, DOE stated that absent an interim waiver, the specified variable-speed coil-only single-split models that are subject of the waiver cannot be tested under the existing test procedure because Appendix M does not include provisions for determining certain air volume rates for variable-speed coil-only single-split systems. 83 FR 24769. Typical variable-speed single-split systems have a communicating system, *i.e.,* the condensing units and indoor units communicate and indoor unit air flow varies based on the operation of the outdoor unit. However, as presented in GD Midea's petition, its variable-speed outdoor units are non-communicative systems and the indoor blower section maintains a constant indoor blower fan speed.[4] DOE also determined that the alternate test procedure suggested by GD Midea allows for the accurate measurement of efficiency of these products, while alleviating the testing problems associated with GD Midea's implementation of CAC and HP testing for the basic models specified in GD Midea's petition. *Id.*

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. 83 FR 24770. In response, DOE received comments from the Natural Resources Defense Council (''NRDC''), Goodman Manufacturing Company, LP (''Goodman''), and Advanced Distributor Products, LLC (ADP).[5]

NRDC commented that it understood the issue identified by GD Midea with the current test procedure for GD Midea's products, but that it was concerned that the alternate test procedure suggested by GD Midea would overstate the energy efficiency of variable speed coil-only single-split systems. NRDC stated that in the field, it would expect these systems to modulate compressor speed to maintain a constant capacity regardless of outdoor ambient conditions. However, because the fan speed in the specified CACs and HPs is fixed, under test conditions the systems may deliver reduced capacity, but at a higher coefficient of performance (''COP''). NRDC states that this effect would be more pronounced with a slower compressor speed.

In response to NRDC's comment, DOE notes that the DOE test procedure calls for adjusting the measured capacity and the total power input to account for the fan input power (see Appendix M, section 3.3.d) using an adjustment that

[3] On June 10, 2010, and June 20, 2018, GD Midea supplemented the list of basic models listed in its petition to confirm the manufacturer and individual model numbers of the paired indoor and outdoor units for which it seeks a waiver. The updated list of basic models is available at: *https://www.regulations.gov/document?D=EERE-2017-BT-WAV-0060-0001.*

[4] DOE reviewed public -facing materials (e.g., marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, which supported GD Midea's assertion that the units are installed as variable-speed coil-only systems, in which the indoor fan speed remains constant at full and part-load operation.

[5] The comments can be accessed at: *https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0060.*

is proportional to air volume rate. In the alternate test procedure, this adjustment remains constant because of the constant air volume rate. Consequently, the lower the capacity, the more the fan power adjustment reduces COP, contrary to NRDC's concern. The fan power adjustment is intended to reflect typical fan power of indoor fan motors in the field, with which coil-only indoor units would be paired. Hence, even if the COP is higher at a lower capacity, that COP would be consistent with the pairing of the indoor unit with a typical field air moving system. In addition, even though a system may be tested at minimum capacity, the seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) are calculated using the energy efficiency ratio (EER) and heating performance factor (HPF) for each temperature bin based on capacities matching conditioning loads representative for the temperatures (see, *e.g.,* Appendix M section 4.1.4.2, which provides a method to determine system EER when the system delivers capacity between minimum and maximum capacity). Thus, the alternate test procedure appropriately measures the energy efficiency of the GD Midea products subject to this waiver.

Goodman stated the alternate test procedure should provide the exact same air volume rate for testing of both the cooling mode and heating mode, but it was not clear that the alternate test procedure accomplished this for heating mode.

DOE notes that the air volume rates are the same for all tests under the alternate test procedure. As instructed in the alternate test procedure specified in the interim waiver and this Decision and Order, the heating intermediate air volume rate is the same as the heating full-load air volume rate determined in section 3.1.4.4.1.a of Appendix M. Section 3.1.4.4.1.a requires use of the cooling full-load air volume rate for full-load heating. Further, the heating minimum-load air-volume rate is specified to be equal to the heating full-load air volume rate for ducted coil-only systems. Hence, air volume rates are the same for all operating conditions under the alternate test procedure, as recommended by Goodman.

ADP agreed that the current test procedure does not allow for testing of variable-speed coil-only single-split systems, and that an alternate test procedure is needed. ADP suggested that to address other potential waiver requests, allowance should be made for different air volume rate settings, similar to the allowances in the current DOE test procedure for two-stage coil-only systems. ADP also expressed concern that GD Midea appeared to publish ratings in the AHRI certification database for the specified basic units prior to submission of the waiver request, and prior to being granted an interim waiver. ADP also noted that this also calls into question any compliance statement made to DOE about these products pursuant to 10 CFR 429.12(c). ADP further expressed concern regarding the length of time between the submission of the petition for waiver and the publication of the Notice of Petition for Waiver.

DOE notes that a Decision and Order applies only to those basic models specified in the Order. The petition for waiver for GC Midea did not require DOE to consider or evaluate a test procedure that specifies different air volume rate settings such as that used in the current test procedure for two-stage coil-only systems. Accordingly, DOE is treating ADP's comment on this point to apply more generally than to the specific waiver request at issue. DOE will consider this issue in greater detail if it should decide to amend the CAC and HP test procedure in the future, or if it receives an application for a test procedure waiver for other basic models in which issues with different air volume rates are presented.

DOE appreciates ADP's remaining comments regarding the timeframe of the waiver process and GD Midea's basic models appearing on the AHRI Certification Directory, but because they are outside the scope of the petition for waiver they will be considered separate from this Decision and Order.

For the reasons explained here and in the Notice of Petition for Waiver, DOE understands that absent a waiver, the basic models identified by GD Midea in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by GD Midea and concludes that it will allow for the accurate measurement of the energy use of the products, while alleviating the testing problems associated with GD Midea's implementation of DOE's applicable CAC and HP test procedure for the specified basic models. Thus, DOE is requiring that GD Midea test and rate the specified CAC and HP basic models according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure provided in the interim waiver.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner.

GD Midea may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 430.27(g). GD Midea may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, GD Midea may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

## III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission (''FTC'') staff concerning the GD Midea petition for waiver. The FTC staff did not have any objections to DOE granting a waiver to GD Midea for the specified basic models.

## IV. Order

After careful consideration of all the material that was submitted by GD Midea, the various public-facing materials (e.g., marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, and the comments received in this matter, it is **ORDERED** that:

(1) GD Midea must, as of the date of publication of this Order in the *Federal Register*, test and rate the GD Midea Heating & Ventilating Equipment Co., Ltd brand and Bosch Thermotechnology Corp brand single-split CAC and HP basic models MOVA–36HDN1–M18M and MOVA–60HDN1–M18M (which contain individual combinations that each consist of an outdoor unit that uses a variable speed compressor matched with a coil-only indoor unit, and is designed to operate as part of a non-communicative system in which the compressor speed varies based only on controls located in the outdoor unit and the indoor blower unit maintains a

constant indoor blower fan speed), using the alternate test procedure set forth in paragraph (2):

GD Midea basic models MOVA–36HDN1–M18M and MOVA–60HDN1–M18M include the following individual combinations, which do not specify a particular air mover, listed by brand name:

| Brand name | Basic model No. | Outdoor unit | Indoor unit |
|---|---|---|---|
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–36HDN1–M18M. | MOVA–36HDN1–M18M. | MC**2430ANTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–36HDN1–M18M. | MOVA–36HDN1–M18M. | MC**2430BNTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–36HDN1–M18M. | MOVA–36HDN1–M18M. | MC**3036ANTD |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–36HDN1–M18M. | MOVA–36HDN1–M18M. | MC**3036BNTD |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–36HDN1–M18M. | MOVA–36HDN1–M18M. | MC**3036CNTD |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–60HDN1–M18M. | MOVA–60HDN1–M18M. | MC**4248BNTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–60HDN1–M18M. | MOVA–60HDN1–M18M. | MC**4248CNTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–60HDN1–M18M. | MOVA–60HDN1–M18M. | MC**4248DNTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–60HDN1–M18M. | MOVA–60HDN1–M18M. | MC**4860CNTF |
| GD MIDEA HEATING & VENTILATING EQUIPMENT CO., LTD | MOVA–60HDN1–M18M. | MOVA–60HDN1–M18M. | MC**4860DNTF |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–36HDN1–M18M. | BOVA–36HDN1–M18M. | BMA*2430ANTD |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–36HDN1–M18M. | BOVA–36HDN1–M18M. | BMA*2430BNTD |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–36HDN1–M18M. | BOVA–36HDN1–M18M. | BMA*3036ANTD |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–36HDN1–M18M. | BOVA–36HDN1–M18M. | BMA*3036BNTD |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–36HDN1–M18M. | BOVA–36HDN1–M18M. | BMA*3036CNTD |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–60HDN1–M18M. | BOVA–60HDN1–M18M. | BMA*4248BNTF |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–60HDN1–M18M. | BOVA–60HDN1–M18M. | BMA*4248CNTF |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–60HDN1–M18M. | BOVA–60HDN1–M18M. | BMA*4248DNTF |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–60HDN1–M18M. | BOVA–60HDN1–M18M. | BMA*4860CNTF |
| BOSCH THERMOTECHNOLOGY CORP | MOVA–60HDN1–M18M. | BOVA–60HDN1–M18M. | BMA*4860DNTF |

(2) The alternate test procedure for the GD Midea basic models identified in paragraph (1) is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M, except that as described below, for coil-only combinations: The cooling full-load air volume rate as determined in section 3.1.4.1.1.c of Appendix M shall also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate as determined in section 3.1.4.4.1.a of Appendix M shall also be used as the heating intermediate air volume rate. All other requirements of Appendix M remain applicable.

In 3.1.4.2, *Cooling Minimum Air Volume Rate,* include:

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.3, *Cooling Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling intermediate air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.6, *Heating Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the heating intermediate air volume rate is the same as the heating full-load air volume rate determined in section 3.1.4.4.1.a.

(3) *Representations.* GD Midea may not make representations about the efficiency of the basic models identified in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 430, subpart B, appendix M, as specified in this Order, and 10 CFR part 429, subpart B.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) If GD Midea makes any modifications to the controls or configurations of these basic models, the waiver would no longer be valid and GD Midea would either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption

characteristics. 10 CFR 430.27(k)(1). Likewise, GD Midea may request that DOE rescind or modify the waiver if GD Midea discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this waiver does not release GD Midea from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on November 1, 2018.

Kathleen B. Hogan,

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2018–24547 Filed 11–8–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–16–000.

*Applicants:* TG High Prairie, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of TG High Prairie, LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5067.

*Comments Due:* 5 p.m. ET 11/23/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2551–009; ER10–1846–008; ER10–1849–014; ER10–1852–020; ER10–1855–008; ER10–1887–014; ER10–1920–016; ER10–1928–016; ER10–1952–014; ER10–1961–014; ER10–1994–008; ER10–1995–009; ER10–2720–016; ER11–2642–009; ER11–4428–016; ER11–4462–029; ER12–1228–016; ER12–1880–015; ER12–2227–014; ER12–569–015; ER12–895–014; ER13–2474–010; ER13–712–016; ER14–2707–011; ER14–2708–012; ER14–2709–011; ER14–2710–011; ER15–1925–008; ER15–2676–007; ER15–30–009; ER15–58–009; ER16–1440–005; ER16–1672–005; ER16–2190–004; ER16–2191–004; ER16–2240–005; ER16–2241–004; ER16–2275–004; ER16–2276–004; ER16–2297–004; ER16–2453–005; ER17–2152–001; ER17–838–004; ER18–2067–001; ER18–2314–001.

*Applicants:* Baldwin Wind, LLC, Blackwell Wind, LLC, Brady Interconnection, LLC, Brady Wind, LLC, Brady Wind II, LLC, Breckinridge Wind Project, LLC, Cedar Bluff Wind, LLC, Chaves County Solar, LLC, Cimarron Wind Energy, LLC, Cottonwood Wind Project, LLC, Day County Wind, LLC, Elk City Wind, LLC, Ensign Wind, LLC, Florida Power & Light Company, FPL Energy Burleigh County Wind, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, Gray County Wind Energy, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC, Mammoth Plains Wind Project, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Minco Wind V, LLC, Ninnescah Wind Energy, LLC, Osborn Wind Energy, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Roswell Solar, LLC, Rush Springs Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Sholes Wind Energy, LLC, Steele Flats Wind Project, LLC, Wessington Wind Energy Center, LLC, Wilton Wind II, LLC, NEPM II, LLC, NextEra Energy Marketing, LLC.

*Description:* Notification of Non-Material Change in Status, et al. of NextEra Resources Entities.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5228.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–256–000.

*Applicants:* Wisconsin Power and Light Company.

*Description:* § 205(d) Rate Filing: Wisconsin Power and Light Company Wholesale Formula Rate Changes to be effective 12/31/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5224.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–275–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018–11–02_Q3 Clean-up Filing to be effective 1/2/2019.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5079.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–277–000.

*Applicants:* Midcontinent Independent System Operator, Inc., ALLETE, Inc.

*Description:* § 205(d) Rate Filing: 2018–11–02_SA 3201 MP–GRE ICA (Brainerd) to be effective 11/3/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5084.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–278–000.

*Applicants:* Midcontinent Independent System Operator, Inc., ALLETE, Inc.

*Description:* § 205(d) Rate Filing: 2018–11–02_SA 3203 MP–GRE ICA (Baxter) to be effective 11/3/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5097.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–279–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: DEF–RCID NITSA–NOA Amendment (SA–147) to be effective 12/1/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5110.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–280–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018–11–02_Revisions to Attachment FF–4 to be effective 1/2/2019.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5126.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–281–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: BPA Construct Agmt for Hilltop Happy Camp to be effective 12/24/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5131.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–283–000.

*Applicants:* ALLETE, Inc.

*Description:* Initial rate filing: Reactive Power to be effective 1/1/2019.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5166.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–284–000.

*Applicants:* Florida Power & Light Company.

*Description:* § 205(d) Rate Filing: FPL and FKEC Amendments to Rate Schedule FERC No. 322 to be effective 4/1/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5170.

*Comments Due:* 5 p.m. ET 11/23/18.

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: November 2, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24535 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP19–9–000]**

### National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on October 26, 2018, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP19–9–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon certain natural gas storage facilities within the Zoar Storage Field in Erie County, New York. Specifically, National Fuel requests to plug and abandon in place two active injection/withdrawal storage wells and their associated 4-inch-diameter well lines, totaling approximately 55.5 feet in length. National Fuel states the proposed abandonments will have no impact on their existing customers or storage operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Alice A. Curtiss, Deputy General Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7075, or by email at *curtissa@natfuel.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* November 26, 2018.

Dated: November 5, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–24560 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER19–274–000]**

### TG High Prairie, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced TG High Prairie, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 5, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24536 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER19–223–000]**

### MidWest Power; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MidWest Power's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24537 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP19–173–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate—Keyspan releases 11–1–18 to be effective 11/1/2018.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5099.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–187–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) Rate Filing: Negotiated Rates—CFE International Contract 911557 to be effective 11/1/2018.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5184.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–189–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) Rate Filing: Negotiated Rates—BP Energy 8954515 to be effective 11/1/2018.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5193.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–203–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: AGT FRQ 2018 FILING to be effective 12/1/2018.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5251.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–209–000.
*Applicants:* Kinder Morgan Louisiana Pipeline LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate—Sabine Pass to be effective 12/1/2018.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5284.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–212–000.
*Applicants:* OkTex Pipeline Company, L.L.C.
*Description:* Compliance filing 2017–2018 Gas Sales and Purchases Report.
*Filed Date:* 10/31/18.
*Accession Number:* 20181031–5287.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP11–1591–000.
*Applicants:* Golden Pass Pipeline LLC.
*Description:* Report Filing: 2018 Annual Penalty Revenues and Costs of Golden Pass Pipeline.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5073.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP18–1044–001.
*Applicants:* Summit Natural Resources, LLC.
*Description:* Amended Petition for Temporary Waiver, et al. of Summit Natural Resources, LLC under RP18–1044.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5131.
*Comments Due:* 5 p.m. ET 11/8/18.

*Docket Numbers:* RP18–1104–002.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* Compliance filing Compliance Tariff Filing to be effective 10/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5030.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–214–000.
*Applicants:* Tallgrass Interstate Gas Transmission, LLC.
*Description:* Compliance filing Compliance Tariff Filing (CP18–34–000) to be effective 11/1/2018.
*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5028.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–215–000.
*Applicants:* ANR Pipeline Company.
*Description:* § 4(d) Rate Filing: WEPCO Negotiated Rate 107896 Amend. 10 to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5031.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–216–000.
*Applicants:* Rover Pipeline LLC.
*Description:* § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 11–1–18 to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5036.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–217–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* § 4(d) Rate Filing: 2018 Fuel Tracker Filing to be effective 4/1/2019.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5037.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–218–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (PennEnergy 37580, 37579 to BP 37586, 37587) to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5038.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–219–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Riverbend 37584 to Wells Fargo 37588) to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5039.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–220–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Petrohawk 41455 releases eff 11–1–2018) to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5055.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–221–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rates—Colonial release to Direct Energy 798149 to be effective 11/2/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5107.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–222–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: OTRA—Winter 2018 to be effective 12/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5111.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–223–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) Rate Filing: Negotiated Capacity Release Agreements—11/1/2018 to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5142.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–224–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* § 4(d) Rate Filing: 2018 Fuel Tracker Filing to be effective 4/1/2019.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5144.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–225–000.
*Applicants:* NextEra Energy Marketing, LLC,EQT Energy, LLC.
*Description:* Joint Petition for Temporary Waivers of Capacity Release Regulations and Related Tariff Provisions, et al. of NextEra Energy Marketing, LLC, et al. under RP19–225.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5145.
*Comments Due:* 5 p.m. ET 11/8/18.

*Docket Numbers:* RP19–226–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Agmt—Diversified to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5153.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–227–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Non-Conforming & Negotiated Rate Amnd—Ascent to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5154.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–228–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Agreements—Spotlight & Mercuria to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5157.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–229–000.
*Applicants:* Portland Natural Gas Transmission System.
*Description:* § 4(d) Rate Filing: PNGTS Nov 1 Neg Rate Agmts Filing to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5163.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–230–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: Neg Rate 2018–11–01 Encana to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5165.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–231–000.
*Applicants:* Alliance Pipeline L.P.
*Description:* § 4(d) Rate Filing: Contract Adjustments for 11–1–2018 to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5173.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–232–000.
*Applicants:* Destin Pipeline Company, L.L.C.
*Description:* Compliance filing Annual Fuel Retention Adjustment Filing to be effective 9/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5177.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–233–000.
*Applicants:* Maritimes & Northeast Pipeline, L.L.C.
*Description:* eTariff filing per 1430: MNUS FERC Form 501–G Waiver Request.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5183.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–234–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—November 2018—Great Salt, Louisiana Gas 1017 to be effective 11/1/2018.
*Filed Date:* 11/1/18.
*Accession Number:* 20181101–5190.
*Comments Due:* 5 p.m. ET 11/13/18.

*Docket Numbers:* RP19–165–001.
*Applicants:* WBI Energy Transmission, Inc.
*Description:* Tariff Amendment: 2018 Amendment to Section 4 Rate Case to be effective 12/1/2018.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5109.
*Comments Due:* 5 p.m. ET 11/14/18.

*Docket Numbers:* RP19–235–000.
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.
*Description:* § 4(d) Rate Filing: Volume No. 2—Corpus Christi

Liquefaction, LLC SP341918 to be effective 12/1/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5001.

*Comments Due:* 5 p.m. ET 11/14/18.

*Docket Numbers:* RP19–236–000.

*Applicants:* Northern Natural Gas Company.

*Description:* § 4(d) Rate Filing: 20181102 Negotiated Rate to be effective 11/3/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5175.

*Comments Due:* 5 p.m. ET 11/14/18.

*Docket Numbers:* RP19–237–000.

*Applicants:* Millennium Pipeline Company, LLC.

*Description:* Compliance filing Tariff Changes To Incorporate Project Incremental Retainage Rate to be effective 12/15/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5199.

*Comments Due:* 5 p.m. ET 11/14/18.

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: November 5, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24533 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL19–9–000]**

### Notice of Complaint; Stonegate Power, LLC v. PJM Interconnection, L.L.C.

Take notice that on November 1, 2018, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2018), Stonegate Power, LLC (Complainant) filed a formal complaint (complaint) against PJM Interconnection, L.L.C. (Respondent) alleging that the Respondent violated its Open Access Transmission Tariff, Manual 14C of the Respondent's business practices manuals, and the Gateway Energy Center (GEC) Interconnection Construction Service Agreement by limiting the suspension period for GEC to one year, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent and CPV Shore, Inc. a later-queued project, listed on the Commission's list of Corporate Officials, as well as on the New Jersey Board of Public Utilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on November 21, 2018.

Dated: November 5, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–24561 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2698–110]**

### Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests; Duke Energy Carolinas, LLC

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Temporary variance from reservoir level (Article 401) and spillway upgrade work.

b. *Project No:* 2698–110.

c. *Date Filed:* October 1, 2018.

d. *Applicant:* Duke Energy Carolinas, LLC (licensee).

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jeff Lineberger, Director, Duke Energy Carolinas, LLC, 526 S. Church Street, Mail Stop EC12Y, Charlotte, NC 28202, *Jeff.Lineberger@duke-energy.com.*

i. *FERC Contact:* Michael Calloway at 202–502–8041, or *michael.calloway@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The first page of any filing should include docket number P–2698–110.

k. *Description of Request:* The licensee is proposing to drawdown the Cedar Cliff Hydroelectric Development's reservoir 30 feet from July 2019 until December 2020 (approximately 17 months) in order to complete auxiliary spillway upgrades for project safety purposes. The auxiliary spillway will be removed, and the spillway area will be modified by rock splitting and blasting to lower the sill to 2,305 ft AMSL to accommodate 6 Fusegates. The resulting spoil material will be placed in the reservoir. The licensee is proposing mitigation measures to protect Indiana bats and northern long-eared bats. The licensee also provided revised Section 401 Water Quality Certification conditions from the North Carolina Division of Water Resources to permit the proposed work. The licensee also included a Water Quality Monitoring Plan to monitor for water quality changes due to pyrite oxidation resulting from exposure of rock during construction and spoil placement in the reservoir. Furthermore, the licensee plans to close the public access boat ramp for the duration of the drawdown, and plans to repave the parking lot and remove sediment from the launch area during the closure.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the temporary variance in reservoir level and spillway replacement project Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 5, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–24563 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1437–008.

*Applicants:* Tampa Electric Company.

*Description:* Notice of Change in Status of Tampa Electric Company.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5100.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER10–2607–004; ER10–2626–003.

*Applicants:* Old Dominion Electric Cooperative, TEC Trading, Inc.

*Description:* Supplement to December 23, 2018 Updated Market Power Analyses in Northeast Region of the ODEC Entities, et al.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5191.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER18–1945–002.

*Applicants:* Alabama Power Company.

*Description:* Tariff Amendment: Amendment to Pending Amendment of Southern's Tariff Vol. 4 to be effective 12/31/9998.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5137.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER18–2320–001.

*Applicants:* Entergy Texas, Inc.

*Description:* Tariff Amendment: ETI–ETEC Wholesale Distribution Service Agreement to be effective 8/1/2018.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5056.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER18–2353–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment: 2018–10–25_Amendment to Enhance Price Volatility Make-Whole Payment Processes to be effective 12/1/2018.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5091.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER18–2518–001.

*Applicants:* Black Hills Electric Generation, LLC.

*Description:* Tariff Amendment: Supplement to Petition for Acceptance of Market-Based Rate Tariff to be effective 11/28/2018.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5134.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–105–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Amendment to Extend Time for Action: Periodic Review of VRRs to be effective 1/17/2019.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5054.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–191–000.

*Applicants:* GridLiance West LLC.

*Description:* § 205(d) Rate Filing: GridLiance West Regulatory Asset

Amortization Filing to be effective 12/25/2018.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5162.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER19–192–000.

*Applicants:* Great Plains Windpark Legacy, LLC.

*Description:* § 205(d) Rate Filing: Notice of Succession to be effective 10/26/2018.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5172.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER19–193–000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC.

*Description:* Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: Revised Interconnection Agreement SA No. 4562 [Pro Forma sheets] to be effective 10/26/2018.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5177.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER19–194–000.

*Applicants:* Midwest Energy, Inc.

*Description:* Petition for Temporary Waiver of Formula Rate Protocols of Midwest Energy, Inc.

*Filed Date:* 10/25/18.

*Accession Number:* 20181025–5192.

*Comments Due:* 5 p.m. ET 11/15/18.

*Docket Numbers:* ER19–195–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4913; Queue No. AC2–113 to be effective 12/7/2018.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5030.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–196–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2018–10–26 Transferred Frequency Response Agreement with Chelan County PUD to be effective 12/1/2018.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5047.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–197–000.

*Applicants:* AEP Texas Inc.

*Description:* § 205(d) Rate Filing: AEPTX-Western Farmers Electric Cooperative Amended TSA to be effective 10/1/2018.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5075.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–198–000.

*Applicants:* Arizona Public Service Company.

*Description:* Compliance filing: Service Agreement No. 218, Amendment No. 1 to be effective 7/1/2018.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5101.

*Comments Due:* 5 p.m. ET 11/16/18.

*Docket Numbers:* ER19–199–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018–10–26_Improving thresholds for Uninstruction Deviation to be effective 5/1/2019.

*Filed Date:* 10/26/18.

*Accession Number:* 20181026–5116.

*Comments Due:* 5 p.m. ET 11/16/18.

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: October 26, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24550 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC19–21–000.

*Applicants:* Meadow Lake Wind Farm VI LLC, Prairie Queen Wind Farm LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of Meadow Lake Wind Farm VI LLC, et. al.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5282.

*Comments Due:* 5 p.m. ET 11/23/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2130–019.

*Applicants:* Forward Energy LLC.

*Description:* Supplement to June 15, 2018 Triennial Report and Change in Fact Notice of Forward Energy LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5234.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER10–2136–014.

*Applicants:* Invenergy Cannon Falls LLC.

*Description:* Supplement to June 15, 2018 Triennial Report and Change in Fact Notice of Invenergy Cannon Falls LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5233.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER11–4044–020.

*Applicants:* Gratiot County Wind LLC.

*Description:* Supplement to June 15, 2018 Triennial Report and Change in Fact Notice of Gratiot County Wind LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5232.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER11–4046–019.

*Applicants:* Gratiot County Wind II LLC.

*Description:* Supplement to June 15, 2018 Triennial Report and Change in Fact Notice of Gratiot County Wind II LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5265.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER12–164–018.

*Applicants:* Bishop Hill Energy III LLC.

*Description:* Supplement, et al. to June 15, 2018 Triennial Report and Change in Fact Notice of Bishop Hill Energy III LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5263.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER16–1720–007.

*Applicants:* Invenergy Energy Management LLC.

*Description:* Supplement to June 15, 2018 Triennial Report and Change in Fact Notice of Invenergy Energy Management LLC.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5231.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER18–171–002.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 2236R9 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 10/1/2017.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5193.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER18–1952–003.

*Applicants:* Gulf Power Company.
*Description:* Tariff Amendment: Gulf Power Supplemental Response and Amendment to be effective 12/31/9998.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5183.
*Comments Due:* 5 p.m. ET 11/19/18.
*Docket Numbers:* ER19–276–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revisions to Sch. 12–Appx A: Oct 2018 RTEP, 30-day Comments due Dec 2, 2018 to be effective 1/31/2019.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5082.
*Comments Due:* 5 p.m. ET 12/3/18.
*Docket Numbers:* ER19–281–001.
*Applicants:* PacifiCorp.
*Description:* Tariff Amendment: Amend Filing RS 739 BPA Cnstr Agmt Hilltop Happy Camp to be effective 1/2/2019.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5223.
*Comments Due:* 5 p.m. ET 11/23/18.
*Docket Numbers:* ER19–282–000.
*Applicants:* Florida Power & Light Company.
*Description:* § 205(d) Rate Filing: FPL and LCEC Amendments to Rate Schedule FERC No. 317 to be effective 4/1/2018.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5163.
*Comments Due:* 5 p.m. ET 11/23/18.
*Docket Numbers:* ER19–285–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to WMPA SA No. 4768; Queue No. AC1–117 to be effective 8/4/2017.
*Filed Date:* 11/2/18.
*Accession Number:* 20181102–5178.
*Comments Due:* 5 p.m. ET 11/23/18.

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: November 5, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24538 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ19–1–000]**

### City of Vernon, California; Notice of Filing

Take notice that on October 31, 2018, the City of Vernon, California submitted its tariff filing: Filing 2019 Transmission Revenue Requirement and Transmission Revenue Balancing Account Adjustment to be effective 1/1/2019.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on November 21, 2018.

Dated: November 5, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–24559 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL19–10–000]**

### New England Ratepayers Association; Notice of Petition for Declaratory Order

Take notice that on November 2, 2018, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,[1] New England Ratepayers Association (Petitioner) filed a petition for declaratory order (petition) finding that Senate Bill 365 [2] is preempted by the Federal Power Act and violates section 210 of the Public Utility Regulatory Policies Act of 1978,[3] all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission,

[1] 18 CFR 385.207 (2017).

[2] Petitioner states that Senate Bill 365 is a recently-enacted New Hampshire statute that mandates a purchase price for wholesale sales by seven generators operating in the state.

[3] 16 U.S.C. 824a–3 (2012).

888 First Street, NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on December 3, 2018.

Dated: November 5, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–24562 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–15–000.

*Applicants:* Lockett Windfarm LLC.

*Description:* Self-Certification of Exempt Wholesale Generator Status of Lockett Windfarm LLC.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5221.

*Comments Due:* 5 p.m. ET 11/23/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–242–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3411; Queue No. W4–029 & Y1–075 to be effective 10/31/2018.

*Filed Date:* 10/31/18.

*Accession Number:* 20181031–5241.

*Comments Due:* 5 p.m. ET 11/21/18.

*Docket Numbers:* ER19–247–000.

*Applicants:* Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Louisiana, LLC.

*Description:* § 205(d) Rate Filing: E–RSC Rate Schedule to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5060.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–263–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: AMPT/PJM submits revisions to OATT re: new Att H to add Formula Rate/Protocols to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5152.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–264–000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: MAIT submits one ECSA, Service Agreement No. 5194 to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5158.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–265–000.

*Applicants:* DATC Path 15, LLC.

*Description:* § 205(d) Rate Filing: Revised Appendix I 2019 to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5161.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–266–000.

*Applicants:* Invenergy Nelson LLC.

*Description:* Initial rate filing: Filing of Reactive Power Rate Schedule to be effective 12/1/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5162.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–267–000.

*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.BKE–LIB to be effective 12/31/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5169.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–268–000.

*Applicants:* Minco IV & V Interconnection, LLC.

*Description:* Baseline eTariff Filing: Minco Interconnection IV & V, LLC Shared Facilities Agreement to be effective 11/2/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5174.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–269–000.

*Applicants:* Westar Energy, Inc.

*Description:* § 205(d) Rate Filing: Amendment to Fixed Depreciation Rates, TFR, Actual Gross Rev and A–8 to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5179.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–270–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to WMPA SA No. 4953; Queue No. AC2–074 to be effective 2/21/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5182.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–271–000.

*Applicants:* Otter Tail Power Company.

*Description:* § 205(d) Rate Filing: Submission of Operating Services Agreement No. 54 to be effective 1/1/2019.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5196.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–272–000.

*Applicants:* Nevada Power Company.

*Description:* § 205(d) Rate Filing: Rate Schedule No. 164 NPC/SCEC Concurrence El Dorado/Harry Allen to be effective 10/23/2018.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5197.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–273–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Twiggs County Solar (Twiggs Solar) LGIA Amendment Filing to be effective 10/26/2018.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5059.

*Comments Due:* 5 p.m. ET 11/23/18.

*Docket Numbers:* ER19–274–000.

*Applicants:* TG High Prairie, LLC.

*Description:* Baseline eTariff Filing: MBR Application to be effective 1/2/2019.

*Filed Date:* 11/2/18.

*Accession Number:* 20181102–5061.

*Comments Due:* 5 p.m. ET 11/23/18.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF19–258–000.

*Applicants:* KapStone Charleston Kraft, LLC.

*Description:* Form 556 of KapStone Charleston Kraft, LLC under QF19–258.

*Filed Date:* 11/1/18.

*Accession Number:* 20181101–5147.

*Comments Due:* None Applicable.

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: November 2, 2018.

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

*Deputy Secretary.*

[FR Doc. 2018–24534 Filed 11–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9042–2]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements
Filed 10/29/2018 Through 11/02/2018
Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

*EIS No. 20180257, Draft, BIA, BLM, OK,* OKT Draft Joint EIS/BLM RMP and BIA Integrated RMP, Comment Period Ends: 02/07/2019, Contact: Patrick Rich 405–875–3330

*EIS No. 20180264, Final Supplement, USN, WA,* Land-Water Interface and Service Pier Extension at Naval Base Kitsap Bangor, Washington, Review Period Ends: 12/10/2018, Contact: Kimberly Kler 360–315–5103

*EIS No. 20180265, Final, DOE, LA,* ADOPTION—Calcasieu Pass Project, Contact: Brian Lavoie 202–586–2459

The Department of Energy (DOE) has adopted the Federal Energy Regulatory Commission's Final EIS No. 20180258, filed 10/22/2018 with the EPA. DOE was a cooperating agency on this project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the CEQ regulations.

*EIS No. 20180266, Draft, BIA, WI,* Ho-Chunk Nation, Fee-to-Trust and Casino Project, Comment Period Ends: 12/24/2018, Contact: Timothy J. Guyah 612–725–4512

**Amended Notices**

*EIS No. 20180205, Revised Draft, USFWS, WA,* Revised Draft Environmental Impact Statement for a Long-term Conservation Strategy for the Marbled Murrelet, Comment Period Ends: 12/06/2018, Contact: Mark Ostwald 360–753–9564

Revision to FR Notice Published 09/07/2018; Extending the Comment Period from 11/06/2018 to 12/06/2018.

Dated: November 5, 2018.

**Robert Tomiak,**

*Director, Office of Federal Activities.*

[FR Doc. 2018–24456 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2004–0013; FRL–9986–35–OW]**

### Proposed Information Collection Request; Comment Request; EPA Strategic Plan Information on Source Water Protection

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''EPA Strategic Plan Information on Source Water Protection'' (EPA ICR No. 1816.07, OMB Control No. 2040–0197) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in this renewal notice. This is a proposed renewal of the existing ICR, which is approved through March 31, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before January 8, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2004–0013, on-line using *www.regulations.gov* (our preferred method), by email to the OW Docket at *OW-Docket@epa.gov* or by mail to the Water Docket, Environmental Protection Agency, EPA Docket Center (WJC West), MC 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanities, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Sherri Comerford, Drinking Water Protection Division—Prevention Branch, Office of Ground Water and Drinking Water (MC 4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4639; fax number: 202–564–3756; email address: *comerford.sherri@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The EPA is collecting data from the states on their progress toward substantial implementation of protection strategies for all community

water systems (CWSs). The EPA and states use this voluntary collection of data to understand the progress toward the Agency's goal of increasing the percentage of CWSs (and the populations they serve) where risk is minimized through source water protection. The EPA specifically tracks the percentage of all CWSs that are implementing source water protection and the percentage of the total population which is served by those systems.

*Form Numbers:* None.

*Respondents/affected entities:* 51.

*Respondent's obligation to respond:* Voluntary.

*Frequency of response:* Quarterly.

*Total estimated annual burden:* 684 hours. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $29,706 (per year).

*Changes in Estimates:* The EPA anticipates the annual totals for estimated burden and costs at 684 hours and $29,670, respectively. This is a two-fold increase due to voluntary reporting that would increase in frequency from annual to quarterly. State databases are fully developed and tracking is routine, which the EPA believes will result in efficiencies that would allow states to minimize hourly burden and cost.

Dated: November 1, 2018.

**Peter Grevatt,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2018–24580 Filed 11–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

| Fund | Receivership name | City | State | Termination date |
|---|---|---|---|---|
| 10446 | Security Exchange Bank | Marietta | GA | 11/1/2018 |
| 10520 | First Cornerstone Bank | King of Prussia | PA | 11/1/2018 |

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

Dated at Washington, DC, on November 5, 2018.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2018–24500 Filed 11–8–18; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, November 14, 2018 at 10:00 a.m.

**PLACE:** 1050 First Street NE, Washington, DC.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Laura E. Sinram,**

*Deputy Secretary of the Commission.*

[FR Doc. 2018–24719 Filed 11–7–18; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2018.

*A. Federal Reserve Bank of Boston* (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Radius Bancorp, Inc., Boston, Massachusetts;* to become a bank holding company in connection with the conversion by Radius Bank, Boston, Massachusetts into a Massachusetts-chartered trust company.

Board of Governors of the Federal Reserve System, November 6, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–24591 Filed 11–8–18; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 2018.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jill E. Markowski, individually and as trustee of the Jill E. Sapiente Trust and Jill E. Markowski Descendants Trust, both of Inverness, Illinois; the Jill E. Sapiente Trust, Inverness, Illinois; the Jill E. Markowski Descendants Trust, Inverness, Illinois; together with John S. Sapiente, as trustee of the John S. Sapiente Revocable Trust, Naples, Florida; the John S. Sapiente Revocable Trust, Naples, Florida; Jacqueline M. Buckstaff, as trustee of the Jacqueline M. Sapiente Trust and the Jacqueline M. Buckstaff Descendants Trust, both of Deer Park, Illinois; the Jacqueline M. Sapiente Trust, Deer Park, Illinois; the Jacqueline M. Buckstaff Descendants Trust, Deer Park, Illinois; John A. Sapiente, as trustee of the John A. Sapiente Trust and the Joan A. Sapiente Descendants Trust, Inverness, Illinois; and the John A. Sapiente Trust Inverness, Illinois; and the John A. Sapiente Descendants Trust Inverness, Illinois;* to acquire voting shares of Elgin Bancshares, Inc., Elgin, Illinois, and thereby indirectly acquire shares of Union National Bank and Trust Company, Elgin, Illinois.

Board of Governors of the Federal Reserve System, November 6, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–24590 Filed 11–8–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice Requirements Associated with Regulation W (FR W; OMB No. 7100–0304).

**DATES:** Comments must be submitted on or before January 8, 2019.

**ADDRESSES:** You may submit comments, identified by *FR W,* by any of the following methods:

- Agency website: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

#### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance,

and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report**

*Report title:* Notice Requirements Associated with Regulation W.

*Agency form number:* FR W.[1]

*OMB control number:* 7100–0304.

*Frequency:* On occasion.

*Respondents:* Depository institutions.

*Estimated number of respondents:* 4.

*Estimated average hours per response:* Section 223.15(b)(4), 2; Section 223.31(d)(4), 6; Section 223.41(d)(2), 6; Section 223.43(b), 10.

*Estimated annual burden hours:* 24.

*General description of report:* The information collection associated with the Board's Regulation W (Transactions Between Member Banks and Their Affiliates; 12 CFR part 223) is triggered by specific events, and there are no associated reporting forms. Filings are required from insured depository institutions and uninsured member banks that seek to request certain exemptions from the requirements of sections 23A and 23B of the Federal Reserve Act. This information collection is separate from the quarterly Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y–8; OMB No. 7100–0126), which collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. This collection of information comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B of the Federal Reserve Act (FRA), 12 U.S.C. 371c(f) and 371c–1(e), and to request an exemption from the Board.

*Legal authorization and confidentiality:* Sections 23A and 23B of the FRA authorize the Board to issue these notice requirements (12 U.S.C. 371c(f) and 371c-1(e)). Respondents are required to file one or more of the Regulation W notices in order to obtain the benefits noted above. Information provided on the Loan Participation Renewal notice is confidential under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), because the information is typically considered confidential commercial or financial information and is reasonably likely to result in substantial competitive harm if disclosed. However, information provided on the Acquisition notice, the Internal Corporate Reorganization Transaction notice, and the Section 23A Additional Exemption request generally is not considered confidential under exemption 4. Respondents who desire that the information on one of these three submissions be kept confidential pursuant to exemption 4 of the FOIA may request confidential treatment under the Board's rules at 12 CFR 261.15. In addition, any information that is obtained as a part of an examination or supervision of a financial institution is exempt from disclosure under exemption 8 of the FOIA, 5 U.S.C. 552(b)(8).

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was ''Reg W.'' The Board is changing the internal Agency Tracking Number for the purpose of consistency.

Board of Governors of the Federal Reserve System, November 5, 2018.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–24531 Filed 11–8–18; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1631]**

## Application of the RFI/C(D) Rating System to Savings and Loan Holding Companies

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice.

**SUMMARY:** The Board has determined that it will apply the RFI/C(D) rating system to certain savings and loan holding companies (SLHCs). This is the same supervisory rating system that the Board currently applies to bank holding companies (BHCs). SLHCs that are engaged in significant commercial or insurance activities will continue to receive indicative supervisory ratings. SLHCs with $100 billion or more in assets will receive ratings under the RFI/C(D) rating system until the Board applies the Large Financial Institution Rating System to them.

**DATES:** The application of the supervisory rating system to SLHCs is effective February 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** T. Kirk Odegard, Assistant Director and Chief of Staff, Policy Implementation and Effectiveness, (202) 530–6225, Karen Caplan, Assistant Director, (202) 452–2710, Angela Knight-Davis, Manager, (202) 475–6679, Division of Banking Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Keisha Patrick, Senior Counsel, (202) 452–3559, Laura Bain, Senior Attorney, (202) 736–5546, Trevor Feigleson, Senior Attorney, (202) 452–3274, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

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### I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred responsibility for the supervision of SLHCs from the Office of Thrift Supervision (OTS) to the Federal Reserve in July 2011.[1] Since 2011, the Board has applied the RFI/C(D) rating system (commonly referred to as the ''RFI rating system'')[2] to SLHCs on an ''indicative'' basis as a way of providing feedback to SLHCs regarding supervisory expectations while Federal Reserve staff and SLHCs each became familiar with the newly established statutory framework for supervision. Federal Reserve supervisory staff have assigned to each SLHC an ''indicative rating,'' which describes how the SLHC would be rated under the RFI rating system if applied to the company. These indicative ratings

[1] 12 U.S.C. 5412(b)(1).

[2] Under the RFI rating system, BHCs generally are assigned individual component ratings for risk management (R), financial condition (F), and impact (I) of nondepository entities on subsidiary depository institutions. The risk management component is supported by individual subcomponent ratings for board and senior management oversight; policies, procedures, and limits; risk monitoring and management and information systems; and internal controls. The financial condition rating is supported by individual subcomponent ratings for capital adequacy, asset quality, earnings, and liquidity. An additional component rating is assigned to generally reflect the condition of any depository institution subsidiaries (D), as determined by the primary supervisor(s) of those subsidiaries. An overall composite rating (C) is assigned based on an overall evaluation of a BHC's managerial and financial condition and an assessment of potential future risk to its subsidiary depository institution(s). A simplified version of the RFI rating system that includes only the risk management component and a composite rating is applied to noncomplex BHCs with assets of $3 billion or less. *See infra* note 16.

have not carried any supervisory or regulatory consequences.[3]

Prior to the transfer of supervisory responsibility for SLHCs, the OTS assigned supervisory ratings for SLHCs under the CORE rating system.[4] The CORE rating system and the RFI rating system substantially overlapped and generally included assessments of the same set of financial and non-financial factors and provided a summary evaluation of each holding company's condition.

The Board did not adopt the CORE rating system upon taking over supervision of SLHCs. Instead, because the vast majority of SLHCs face similar risks and engage largely in the same activities as BHCs, the Board sought to apply the same RFI rating system to SLHCs as the Board currently applies to BHCs to promote consistency.

After completing a number of supervisory cycles in which the RFI rating system has been applied to SLHCs on an indicative basis, the Board evaluated the information gained from that process, taking into account the differences between SLHCs engaged in traditional banking activities and those engaged in significant commercial or insurance activities. Experience with this process over the past seven years indicates that the RFI rating system is an effective approach to communicating supervisory expectations to most SLHCs. On December 13, 2016, the Board published a notice in the **Federal Register** requesting comment on a proposal (proposal) to fully apply the RFI rating system to all SLHCs except those that are excluded from the definition of ''covered savings and loan holding company'' [5] in section 217.2 of the Board's Regulation Q.[6]

## II. Summary of Comments

The comment period on the proposal closed on February 13, 2017. The Board received one comment from the Insurance Coalition,[7] which expressed support for continuing to apply the RFI rating system on an indicative basis to insurance SLHCs. The commenter also generally supported the Board's proposed approach for assessing capital adequacy for SLHCs receiving indicative ratings, but suggested that such assessment also should explicitly consider (i) the unique risks in the insurance business model, (ii) an insurance SLHC's compliance with State capital rules, and (iii) the policyholder protection mandate. The commenter also requested that the Board delay imposing a formal rating system on insurance SLHCs until the insurance capital rules have been finalized, and that the rating system be tailored to the insurance business model and reflect the State regulatory capital framework. The commenter requested that this same approach be applied for insurers that have been designated systemically important financial institutions by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve.

In response to this comment and consistent with the proposal, the Board has determined that it will continue to apply the RFI rating system to insurance SLHCs on an indicative basis. In response to the commenter's request that the assessment of the capital adequacy for insurance SLHCs receiving indicative ratings should consider certain factors, the Board clarifies that its assessment of insurance SLHCs has taken and will continue to take into account (i) the unique risks in the insurance business model, (ii) an insurance SLHC's compliance with State capital rules, and (iii) the policyholder protection mandate. The commenter's other suggestions pertain to factors that would be considered in the development of any future rating system applicable to insurance SLHCs and any insurance companies that the FSOC has determined should be supervised by the Board.

## III. Applying the RFI Rating System to Certain SLHCs

After reviewing the comment on the proposal, the Board has determined that it will apply the RFI rating system to every SLHC that is depository in nature.[8] SLHCs that are engaged in significant insurance or commercial activities will continue to receive indicative ratings under the RFI rating system. SLHCs that are depository in nature and have $100 billion or more in total consolidated assets will be rated under the RFI rating system only until the Board applies the new rating system for large financial institutions (LFI rating system) to them, which the Board is adopting concurrently through a separate rulemaking and is described below.

Specifically, the Board will continue to assign indicative ratings under the RFI rating system to (i) SLHCs that derive 50 percent or more of their total consolidated assets or total revenues from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(k)) (commercial SLHCs), and (ii) SLHCs that are insurance companies or that hold 25 percent or more of their total consolidated assets in subsidiaries that are insurance companies (insurance SLHCs). The Board will continue to review whether a modified version of the RFI rating system or some other supervisory rating system is appropriate for commercial or insurance SLHCs on a permanent basis.

Subsequent to the closing of the public comment period, on August 17, 2017, the Board invited public comment on a separate notice of proposed rulemaking to adopt the LFI rating system,[9] a supervisory ratings

[3] All SLHCs that have been inspected have received at least one indicative rating.

[4] *See* 72 FR 72442 (December 20, 2007). Under the CORE rating system, SLHCs generally were assigned individual component ratings for capital (C), organizational structure (O), risk management (R), and earnings (E), as well as a composite rating that reflected an overall assessment of the holding company as reflected by consolidated risk management and financial strength.

[5] 12 CFR 217.2. Section 217.2 excludes the following SLHCs from the definition of ''covered savings and loan holding company'': (1) A top-tier SLHC that is (i) an institution that meets the requirements of section 10(c)(9)(C) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(9)(C)) and (ii) as of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)); (2) a top-tier SLHC that is an insurance company; or (3) a top-tier SLHC that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk).

[6] 81 FR 89941 (December 13, 2016).

[7] The Insurance Coalition is a group of federally supervised insurance companies and interested parties.

[8] The RFI rating system will apply to every SLHC except an SLHC that is not a ''covered savings and loan holding company'' in section 217.2 of the Board's Regulation Q. 12 CFR 217.2.

[9] 82 FR 39049 (August 17, 2017). Under the proposed LFI rating system, each large financial institution would have been assigned ratings for three separate components: Capital Planning and Positions; Liquidity Risk Management and Positions; and Governance and Controls. The ratings would have been assigned using a four-point non-numeric scale (Satisfactory/Satisfactory Watch, Deficient-1, and Deficient-2). A firm would need a

framework designed in part to align with the supervisory programs and practices that the Federal Reserve implemented for large financial institutions following the 2007–2009 financial crisis. The LFI rating system would have applied to, among other entities, BHCs and non-insurance, non-commercial SLHCs with total consolidated assets of $50 billion or more, and U.S. intermediate holding companies (IHCs) of foreign banking organizations (FBOs) established under Regulation YY.[10]

In its final rulemaking regarding the LFI framework, which the Board is adopting concurrently with this notice, the Board has modified the scope of application of the LFI rating system to take into consideration statutory changes resulting from the enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) on May 24, 2018.[11] Section 401 of EGRRCPA amended section 165 of the Dodd-Frank Act to raise the $50 billion minimum asset threshold for general application of enhanced prudential standards.[12] Immediately on the date of enactment, BHCs with total consolidated assets of less than $100 billion were no longer subject to these standards. Accordingly, the final LFI rating system applies to BHCs and non-insurance, non-commercial SLHCs with total consolidated assets of $100 billion or more, and to all U.S. IHCs of FBOs. The Board will assign ratings to SLHCs with $100 billion or more in total consolidated assets under the final LFI rating system beginning in early 2020.

However, along with all other depository SLHCs, the RFI rating system will apply to SLHCs with $100 billion or more in total consolidated assets beginning on February 1, 2019. Once the Board applies the LFI rating system to SLHCs with $100 billion or more in total consolidated assets in early 2020, the Board will cease to use the RFI rating system to assign ratings to such large SLHCs. The Board believes it is important to assign ratings to all depository SLHCs at this time in order to promote consistent supervision and treatment of BHCs and SLHCs.

All components of the RFI rating system (*i.e.,* risk management, financial condition, and potential impact of the parent company and nondepository subsidiaries on subsidiary depository institution(s)) will apply to SLHCs that are depository in nature.[13] Likewise, the depository institution rating, which generally mirrors the primary regulator's assessment of the subsidiary depository institution(s), will apply. A numeric rating of 1 indicates the highest rating, strongest performance and practices, and least degree of supervisory concern; a numeric rating of 5 indicates the lowest rating, weakest performance, and the highest degree of supervisory concern.

The financial condition component of the RFI rating includes a subcomponent that represents an assessment of capital adequacy. Compliance with minimum regulatory capital requirements is part of a broader qualitative and quantitative assessment of an SLHC's capital adequacy. As of January 1, 2015, certain SLHCs became subject to minimum capital requirements and overall capital adequacy standards.[14] For SLHCs subject to minimum regulatory capital requirements, assessment of the SLHC's compliance with those requirements will be one element of a broader qualitative and quantitative assessment of capital adequacy.[15]

Noncomplex SLHCs that are subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Regulation Y, appendix C) (Policy Statement)[16] will be assigned an abbreviated version of the RFI rating system consistent with the Board's practice for BHCs outlined in SR letter 13–21.[17] An offsite review of the SLHC will be conducted upon receipt of the lead depository institution's report of examination. The supervisory cycle will be determined by the examination frequency of the lead depository institution and the SLHC will be assigned only a risk management rating and a composite rating.

Finally, elements of the RFI rating system that are codified in the Board's *Bank Holding Company Supervision Manual*[18] will be revised to describe the application of the RFI rating system to certain SLHCs that are depository in nature.[19]

*Assessment of Capital Adequacy and Supervisory Guidance for SLHCs That Receive Indicative Ratings*

For SLHCs that continue to receive an indicative rating under the RFI rating system, examiners will consider the risks inherent in the SLHC's activities and the ability of capital to absorb unanticipated losses, provide a base for growth, and support the level and composition of the parent company and subsidiaries' debt in the evaluation of the SLHC's capital adequacy. As discussed above in Supplementary Information Section II, for insurance SLHCs that receive an indicative rating, examiners will consider the unique risks in the insurance business model, an insurance SLHC's compliance with State capital rules, and the policyholder protection mandate.

In 2013, Board staff published several supervisory letters extending the use of the RFI rating system for, and assignment of, indicative ratings to SLHCs and extending the scope and frequency requirements for supervised holding companies with total consolidated assets of $10 billion or less to SLHCs. Commercial SLHCs and insurance SLHCs may refer to these letters for staff-level guidance on the use of indicative ratings until such time as the Board adopts final guidance on the application of a rating system tailored to these SLHCs.

''Satisfactory'' or ''Satisfactory Watch'' rating for each of the three component ratings to be considered ''well managed.'' The proposal would not have included the assignment of a standalone composite rating or any subcomponent ratings.

[10] 12 CFR 252.153.

[11] Pub. L. 115–174, 132 Stat. 1296–1368 (2018).

[12] EGRRCPA § 401.

[13] Consistent with the approach for BHCs, when assigning a rating to an SLHC, supervisory staff will take into account a company's size, complexity, and financial condition. For example, a noncomplex SLHC with total assets less than $3 billion will not be assigned all subcomponent ratings; rather, only a risk management component rating and composite rating generally will be assigned. These will equate, respectively, to the management component and composite rating under the CAMELS rating system for depository institutions, as assigned to the SLHC's subsidiary savings association by its primary regulator.

[14] *See* 78 FR 62018, 62028 (October 11, 2013) (outlining the timeframe for implementation of Regulation Q for SLHCs and others).

[15] *See* Sections 4060 and 4061 of the *Bank Holding Company Supervision Manual;* Supervision and Regulation Letter 15–19 (December 18, 2015), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1519.htm;* Supervision and Regulation Letter 15–6 (April 6, 2015), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1506.htm;* Supervision and Regulation Letter 09–04 (February 24, 2009, revised December 21, 2015), *available at http://www.federalreserve.gov/boarddocs/srletters/2009/sr0904.htm.*

[16] 12 CFR part 225, Appendix C. The Board issued an interim final rule raising the asset size threshold for determining applicability of the Policy Statement from $1 billion to $3 billion of total consolidated assets. *See* 83 FR 44195 (August 30, 2018).

[17] Supervision and Regulation Letter 13–21 (December 17, 2013), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1321.htm.* Shortly after adoption of this notice, Board staff expects to update Supervision and Regulation Letter 13–21 to modify inspection frequency and scope of expectations for holding companies with total consolidated assets between $1 billion and $3 billion to align with the Policy Statement's revised asset size threshold. *See supra* note 16.

[18] *Available at http://www.federalreserve.gov/boarddocs/supmanual/supervision_bhc.htm.*

[19] *See* Supervision and Regulation Letter 04–18 (December 6, 2014), *available at http://www.federalreserve.gov/boarddocs/srletters/2004/sr0418.htm.*

**IV. Implementation**

The Board will begin to apply the RFI rating system on February 1, 2019 to all non-insurance and non-commercial SLHCs, including for any inspections commencing after that date. Federal Reserve staff will use the RFI rating system to assign ratings to non-commercial, non-insurance SLHCs with $100 billion or more in total consolidated assets in 2019, and assign ratings to such SLHCs using the new LFI rating system beginning in early 2020. As noted, commercial SLHCs and insurance SLHCs will continue to receive RFI ratings on an indicative basis. The Federal Reserve's numeric ratings for SLHCs, which are confidential supervisory information, will be disclosed on a confidential basis, in accordance with current disclosure practices.[20] Under no circumstances should an SLHC or any of its directors, officers, or employees disclose or make public any of the ratings.

**V. Regulatory Analysis**

*Paperwork Reduction Act*

There is no collection of information required by this notice that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) requires that an agency publish an initial regulatory flexibility analysis (IRFA) in connection with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[21] An IRFA was included in the proposal to fully apply the RFI rating system to SLHCs that are not insurance or commercial SLHCs.[22] In the IRFA, the Board requested comment on the effect of the proposal on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The FRFA 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 IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (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 changes made to the proposed rule in the final rule as a result of the comments; (4) a description of 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 which will be subject to the requirement and type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency. In accordance with section 604 of the RFA, the Board has reviewed the final rule.

Under regulations issued by the Small Business Administration, a small entity includes an SLHC with assets of $550 million or less.[23] Based on data as of September 11, 2018, there are approximately 132 SLHCs that have total domestic assets of $550 million or less and are therefore considered small entities for purposes of the RFA. The final rule applies to all non-insurance and non-commercial SLHCs. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the application of the final rule.*

As discussed, the Board is fully applying the RFI rating system to non-insurance and non-commercial SLHCs to further the Board's goal of ensuring that holding companies that control depository institutions are subject to consistent standards and supervisory programs. After a seven-year adjustment period in which the Board assigned RFI ratings to SLHCs on an indicative basis, the Board has determined that the RFI rating system is an effective approach to communicating supervisory expectations to all non-insurance and non-commercial SLHCs.

2. *Significant issues raised by the public comments in response to the IRFA, a statement of the Board's assessment of such issues, and a statement of any changes made in the rule as a result of such comments.*

As noted above, the Board did not receive any comments on the IRFA and only received one responsive comment on the proposal. The comment did not raise any issues regarding the application of the RFI rating system to small entities. Instead, the comment expressed support for continuing to apply the RFI rating system on an indicative basis to insurance SLHCs and requested the Board consider certain issues in developing any future rating system that may be applied to insurance SLHCs and to insurance companies that the FSOC has determined should be supervised by the Federal Reserve. Accordingly, no changes were made as a result of public comments.

3. *Response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and detailed statement of any changes made to the proposed rule in the final rule as a result of the comments.*

The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposal.

4. *Description and estimate of the number of small entities to which the rule will apply.*

The application of the RFI rating system to non-insurance and non-commercial SLHCs will apply to approximately 191 SLHCs, of which only 132 SLHCs have $550 million or less in total consolidated assets. Moreover, as discussed, noncomplex SLHCs under $3 billion will be assigned an abbreviated version of the RFI rating system consistent with the Board's practice for BHCs outlined in SR 13–21.

5. *Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The application of the RFI rating system does not impose any recordkeeping, reporting, or compliance requirements.

6. *Description of the steps taken to minimize the economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency.*

As noted, noncomplex SLHCs under $3 billion will be assigned an

[20] 12 CFR 261.20.

[21] 5 U.S.C. 601 *et seq.*

[22] 81 FR 89941 (December 13, 2016).

[23] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

abbreviated version of the RFI rating system consistent with the Board's practice for BHCs outlined in SR 13–21. An offsite review of the SLHC will be conducted upon receipt of the lead depository institution's report of examination. The supervisory cycle will be determined by the examination frequency of the lead depository institution and the SLHC will be assigned only a risk management rating and a composite rating.

Moreover, SLHCs have been subject to the RFI rating system on indicative basis for the past seven years, which has provided SLHCs the opportunity to adjust to the RFI rating system. The full application of the RFI rating system to small non-commercial and non-insurance SLHCs will not create any new economic impact on small entities.

In light of the foregoing, the Board does not believe that this final rule will have a significant economic impact on any small entities and therefore believes that there are no significant alternatives that would reduce the economic impact on small entities.

By order of the Board of Governors of the Federal Reserve System, November 2, 2018.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2018–24496 Filed 11–8–18; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Decision to Designate a Class of Employees From the Sandia National Laboratories in Albuquerque, New Mexico, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Sandia National Laboratories in Albuquerque, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

On October 18, 2018, as provided for under 42 U.S.C. 7384*l*(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors or subcontractors who worked in any area at the Sandia National Laboratories in Albuquerque, New Mexico, during the period from January 1, 1995, through December 31, 1996, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on November 17, 2018, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2018–24530 Filed 11–8–18; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–R–240 and CMS–10164]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by January 8, 2019.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–240 Prospective Payments for Hospital Outpatient Services

CMS–10164 Medicare EDI Enrollment Form and EDI Registration

Under the 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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Services; *Use:* Section 1833(t) of the Act, as added by section 4523 of the Balanced Budget Act of 1997 (the BBA) requires the Secretary to establish a prospective payment system (PPS) for hospital outpatient services. Successful implementation of an outpatient PPS requires that CMS distinguish facilities or organizations that function as departments of hospitals from those that are freestanding, so that CMS can determine which services should be paid under the OPPS, the clinical laboratory fee schedule, or other payment provisions applicable to services furnished to hospital outpatients. Information from the reports required under sections 413.65(b)(3) and (c) is needed to make these determinations. In addition, section 1866(b)(2) of the Act authorizes hospitals and other providers to impose deductible and coinsurance charges for facility services, but does not allow such charges by facilities or organizations which are not provider-based. Implementation of this provision requires that CMS have information from the required reports, so it can determine which facilities are provider-based. *Form Number:* CMS–R–240 (OMB control number: 0938–0798); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 750; *Total Annual Responses:* 13,649,150; *Total Annual Hours:* 680,920 (For policy questions regarding this collection contact Emily Lipkin at 410–786–3633.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Medicare EDI Enrollment Form and EDI Registration; *Use:* The Congress, recognizing the need to simplify the administration of health care transactions, enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, on August 21, 1996. Title II, Subtitle F of this legislation directs the Secretary of the Department of Health and Human Services to develop unique standards for specified electronic transactions and code sets for those transactions. The purpose of this Subtitle is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care industry in general through the establishment of standards and requirements to facilitate the electronic transmission of certain health information. This Subtitle also requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions to enable health information to be exchanged electronically. The Standards for Electronic Transactions final rule, 45 CFR part 162 Subpart K § 162.1101 through Subpart R § 162.1802, (hereinafter referred to as ''Transactions Rule'') published August 17, 2000 adopted standards for health care transactions and code sets. Subsequent to the Transactions Rule, CMS–0003–P and CMS–0005–P proposed modifications to the adopted standards essential to permit initial implementation of the standards throughout the entire healthcare industry.

Currently, Medicare contractors have a process in place to enroll providers for electronic billing and other EDI transactions. In support of the HIPAA Transactions Rule, the purpose of this Paperwork Reduction Act (PRA) request is to establish a common form that is sufficient to address all HIPAA transactions. *Form Number:* CMS–10164 (OMB control number: 0938–0983); *Frequency:* Hourly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 193,268; *Number of Responses:* 193,268; *Total Annual Hours:* 64,423. (For policy questions regarding this collection, contact Matt Klischer at 410–786–7488.)

Dated: November 6, 2018.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018–24592 Filed 11–8–18; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–4099]**

### Tedor Pharma, Inc., et al.; Withdrawal of Approval of 10 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is withdrawing approval of 10 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**DATES:** Approval is withdrawn as of December 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993–0002, 240–402–7945, *Trang.Tran@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 040747 | Benzphetamine Hydrochloride (HCl) Tablets, 25 milligrams (mg) and 50 mg. | Tedor Pharma, Inc., 400 Highland Corporate Dr., Cumberland, RI 02864. |
| ANDA 062356 | Gentamicin Sulfate Injection USP, Equivalent to (EQ) 10 mg base/milliliter (mL) and EQ 40 mg base/mL. | Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047. |
| ANDA 074097 | Isoflurane USP, 99.9% | Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045. |
| ANDA 076484 | Ciprofloxacin Injection USP, 200 mg/20 mL and 400 mg/40 mL. | Fresenius Kabi USA, LLC. |
| ANDA 080504 | Epinephrine and Lidocaine HCl Injection, 0.01 mg/mL; 2% and 0.02 mg/mL; 2%. Lidocaine HCl Injection, 2%. | Belmora LLC, 2231 Crystal Dr., #1000, Arlington, VA 22202. |
| ANDA 083559 | Mepivacaine HCl Injection, 3% | Do. |
| ANDA 084315 | Dexamethasone Acetate Injectable Suspension USP, EQ 8 mg base/mL. | Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044. |
| ANDA 084850 | Levonordefrin and Mepivacaine HCl Injection, 2%; 0.05 mg/mL. | Belmora LLC. |
| ANDA 086389 | Lidocaine HCl Viscous Oral Topical Solution USP, 2% | International Medication Systems, Ltd., 1886 Santa Anita Ave., South El Monte, CA 91733. |
| ANDA 087863 | Choledyl SA (oxtriphylline) Extended-Release Tablets USP, 400 mg. | Warner Chilcott Co., LLC, Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044. |

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of December 10, 2018. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on December 10, 2018 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: November 6, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–24605 Filed 11–8–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–P–2506]**

### Determination That AXIRON (Testosterone) Transdermal Metered Solution, 30 Milligrams/1.5 Milliliter Actuation, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that AXIRON (testosterone) transdermal metered solution, 30 milligrams (mg)/1.5 milliliter (mL) actuation, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product if they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, is the subject of NDA 022504, held by Eli Lilly and Company and initially approved on November 23, 2010. AXIRON is indicated for replacement therapy in males for conditions associated with a deficiency or absence of endogenous testosterone.

In a letter dated September 5, 2017, Eli Lilly and Company requested withdrawal of NDA 022504 for AXIRON (testosterone). Eli Lilly and Company later submitted a letter dated September 7, 2017 correcting a typographical error in the September 5, 2017 letter. In the **Federal Register** of June 21, 2018 (83 FR 28856), FDA announced that it was withdrawing approval of NDA 022504, effective July 23, 2018.

K&L Gates LLP submitted a citizen petition received by FDA on June 27,

2018 (Docket No. FDA–2018–P–2506), under 21 CFR 10.25 and 21 CFR 10.30, requesting that the Agency determine whether AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list AXIRON (testosterone) transdermal metered solution, 30 mg/1.5 mL actuation, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs that refer to this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 5, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–24604 Filed 11–8–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meeting

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In accordance with the National Environmental Policy Act, the National Institutes of Health (NIH) is issuing this notice to advise the public that an environmental impact statement will be prepared for the Surgery, Radiology and Lab Medicine Building with associated Utility Vault and Patient Parking Garage project located on the National Institutes of Health, Bethesda Campus, Bethesda, Maryland.

**DATES:** The Scoping Meeting is planned for November 28, 2018, from 6 p.m.-9 p.m., with the formal presentation to begin at 7 p.m. Scoping comments must be postmarked no later than December 29, 2018, to ensure they are considered.

**ADDRESSES:** The Scoping Meeting will be held at 6001 Executive Boulevard, Rockville, MD 20852. All comments and questions on the Scoping Meeting and the Environmental Impact Statement should be directed to Valerie Nottingham, Deputy Director, Division of Environmental Protection, Office of Research Facilities, NIH, B13/2S11, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone 301–496–7775; fax 301–480–0204; or email: *nihnepa@mail.nih.gov.*

**FOR FURTHER INFORMATION CONTACT:** Valerie Nottingham, Deputy Director, Division of Environmental Protection, Office of Research Facilities, NIH, B13/2S11, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone 301–496–7775; fax 301–480–0204; or email: *nihnepa@mail.nih.gov.* For the purpose of National Institutes of Health (NIH) and its National Environmental Policy Act (NEPA) procedures, the delegation of authority to administer, interpret and oversee the applicable environmental laws, Executive Orders and regulations for the NIH including the authority to oversee and manage the NIH NEPA program for assessing environmental impacts and publish final decisions has been given to the Director, Office of Research Facilities Development and Operation, Mr. Daniel G. Wheeland.

**SUPPLEMENTARY INFORMATION:** The NIH's mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. In order to fulfill and uphold this mission the infrastructure of the NIH Bethesda Campus must be able to support the NIH's biomedical research programs.

The proposed Surgery, Radiology and Lab Medicine Building with associated Utility Vault and Patient Parking Garage project is to house General Radiology and Imaging Services (RADIS), the Department of Perioperative Medicine (DPM), the Department of Laboratory Medicine (DLM) and the relocated functions for the National Cancer Institute (NCI) in a state-of-the-art, safe, functionally efficient, flexible and cost-effective facility. During the study period, NIH expanded the building program to also include space for the National Heart, Lung & Blood Institute's (NHLBI) Cardiovascular Intervention Program (Cath Lab) and for the Interventional Radiology (IR) Program.

The proposed project consists of nine (9) levels above grade (including interstitial floors and a roof penthouse) and two (2) levels below grade. The proposed 505,200 building gross square feet (BGSF) of new construction will be linked to the west lab wing of the existing CRC (Building 10), which will include an additional 82,960 BGSF of interior renovation. The proposed new building addition foot print of 53,270 BGSF will be positioned between the CRC and Convent Drive.

The proposed project scope also includes the relocation of a portion of the existing campus utility tunnel, reconstruction of the displaced children's playground and connection to the new Pedestrian Tunnel that will be constructed with the proposed Patient Parking Garage across Convent Drive. Additionally, the project will include the installation of supporting infrastructure, such as emergency generators and medical gas storage, in the new Utility Vault and Utility Yard that will be constructed across Convent Drive as part of a separate, enabling project.

In accordance with 40 CFR 1500–1508 and Health and Human Services (HHS) environmental procedures, NIH will prepare an Environmental Impact Statement (EIS) for the proposed project. The EIS will evaluate the impacts of the alternatives should development occur as proposed. Among the items the EIS will examine are the implications of the project on community infrastructure, including, but not limited to, utilities, storm water management, traffic and transportation, and other public services.

To ensure that the public is afforded the greatest opportunity to participate in

the planning and environmental review process, NIH is inviting oral and written comments on the proposed project and related environmental issues.

The NIH will be sponsoring a public Scoping Meeting to provide individuals an opportunity to share their ideas, including recommended alternatives and environmental issues the EIS should consider. All interested parties are encouraged to attend. NIH has established a 30-day public comment period for the scoping process.

Dated: October 29, 2018.

**Lawrence A. Tabak,**

*Deputy Director, National Institutes of Health.*

[FR Doc. 2018–24557 Filed 11–8–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0096]**

### Agency Information Collection Activities: Transfer of Cargo to a Container Station

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than December 10, 2018) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 33233) on July 17, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) 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) 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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

#### Overview of This Information Collection

*Title:* Transfer of Cargo to a Container Station.

*OMB Number:* 1651–0096.

*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:* Businesses.

*Abstract:* Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivering cargo, containerized cargo may be moved from the place of unlading to a designated container station or may be received directly at the container station from a bonded carrier after transportation in-bond in accordance with 19 CFR 19.41. This also applies to loose cargo as part of containerized cargo. In accordance with 19 CFR 19.42, the container station operator may make a request for the transfer of a container to the station by submitting to CBP an abstract of the manifest for the transferred containers including the bill of lading number, marks, numbers, description of the contents and consignee.

*Estimated Number of Respondents:* 14,327.

*Estimated Number of Annual Responses per Respondent:* 25.

*Estimated Total Annual Responses:* 358,175.

*Estimated Time per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 41,548.

Dated: November 6, 2018.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2018–24595 Filed 11–8–18; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2018–0066]**

### DHS Data Privacy and Integrity Advisory Committee

**AGENCY:** Privacy Office, Department of Homeland Security (DHS).

**ACTION:** Committee Management; notice of Federal Advisory Committee meeting.

**SUMMARY:** The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, December 10, 2018, in Washington, DC The meeting will be open to the public.

**DATES:** The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, December 10, 2018, from 1:00 p.m. to 4:00 p.m. Please note that the meeting may end early if the Committee has completed its business.

**ADDRESSES:** The meeting will be held both in person in Washington, DC at 90 K Street NE, 12th Floor, Room 1204, Washington, DC 20002, and via online forum (URL will be posted on the

Privacy Office website in advance of the meeting at *www.dhs.gov/privacy-advisory-committees*). For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 3:45 p.m.—3:55 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Sandra Taylor at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by November 26, 2018. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2018–0066) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2018–0066) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0655, Washington, DC 20528.

*Instructions:* All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2018–0066). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please bring a government issued photo I.D. and plan to arrive at 90 K Street NE, 12th Floor, Room 1204, Washington, DC no later than 12:50 p.m. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

*Docket:* For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2018–0066.

**FOR FURTHER INFORMATION CONTACT:** Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Title 5, U.S.C. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

## Proposed Agenda

During the meeting, the Chief Privacy Officer and Chief Freedom of Information Act Officer will provide an update on the activities of the Privacy Office since the last meeting. The Committee will receive a briefing on The Cybersecurity and Infrastructure Security Agency, and a briefing on the Department's breach response system. In addition, the Committee will receive an update on the U.S. Customs and Border Protection's Biometric Travel Security Initiatives and the DHS Office of Policy's Immigration Data Initiative. The Committee will review and vote on the Policy Subcommittee's report to the Department providing recommendations on privacy considerations in biometric facial recognition technology; and the Technology Subcommittee's report to the Department providing recommendations regarding privacy considerations in immigration data statistics. The draft reports will be posted on the Committee's website at *www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information* in advance of the meeting. If you wish to submit written comments on the draft reports, you may do so in advance of the meeting by forwarding them to the Committee at the locations listed under **ADDRESSES**. The final agenda will be posted on or before November 26, 2018, on the Committee's website at *www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information.* Please note that the meeting may end early if all business is completed.

## Privacy Act Statement: DHS's Use of Your Information

*Authority:* DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

*Principal Purposes:* When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

*Routine Uses and Sharing:* In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

*Effects of Not Providing Information:* You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

*Accessing and Correcting Information:* If you are unable to access or correct this information by using the method that you originally used to

submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: November 2, 2018.

**Philip S. Kaplan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2018–24597 Filed 11–8–18; 8:45 am]

**BILLING CODE 9110–9L–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7001–N–55]**

## 30-Day Notice of Proposed Information Collection: HOPE VI Implementation and HOPE VI Main Street Programs: Funding and Program Data Collection

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* December 10, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRASubmission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 3, 2018 at 83 FR 38162.

### A. Overview of Information Collection

*Title of Information Collection:* HOPE VI Implementation and HOPE VI Main Street Programs: Funding and Program Data Collection.

*OMB Approved Number:* 2577–0208.

*Type of Request:* Reinstatement, with change, of a previously approved collection.

*Form Number:* HUD–52825–A, HUD–52861, and HUD–53001–A.

*Description of the need for the information and proposed use:* Section 24 of the U.S. Housing Act of 1937, as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105–276, 112 Stat. 2461, approved October 21, 1998) and revised by the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub. L.108–186, 117 Stat. 2685, approved December 16, 2003), established the HOPE VI program for the purpose of making assistance available on a competitive basis to Public Housing Agencies (PHAs) in improving the living environment for Public Housing residents of severely distressed Public Housing projects through the demolition, rehabilitation, reconfiguration, or replacement of severely distressed public housing projects (or portions thereof); and, beginning in Fiscal Year 2004, in rejuvenating the traditional or historic downtown areas of smaller units of local government. Funds were appropriated for competitive HOPE VI Implementation Notices of Funding Availability (NOFAs) through Fiscal Year 2011. The program title has changed from ''HOPE VI Application'' to ''HOPE VI and HOPE VI Main Street Program,'' to better describe this collection. The remaining HOPE VI Implementation grants account for most of the burden. However, HOPE VI funds are no longer being appropriated. HOPE VI Main Street funds are being funded through the Choice Neighborhoods Initiative appropriations.

Collections in support of the HOPE VI Implementation NOFAs, which ended in 2011, are being deleted from this ICR, which include forms HUD–52860–A, HUD–52774, HUD–52780, HUD–52785, HUD–52787, HUD–52790, HUD–52797, HUD–52798, HUD–52799, HUD–52800, SF–424, SF–LLL, HUD–2880, HUD–96010, HUD–96011 and HUD–52861. The total burden is decreasing from 26,516 hours to 3,980 hours and the cost is decreasing from $1,156,305.00 to $226,860.

Currently, there are approximately 55 HOPE VI Implementation grants that remain active and must be monitored by HUD. HUD publishes competitive bi-annual NOFAs for the HOPE VI Main Street program and monitors grants that have been awarded through those NOFAs.

These information collections are required in connection with the monitoring of the remaining active HOPE VI Implementation grants and the bi-annual publication on *http://www.grants.gov* of HOPE VI Main Street NOFAs, contingent upon available funding and authorization, which announce the availability of funds provided in annual appropriations for Section 24 of the Housing Act of 1937, as amended.

Eligible units of local government interested in obtaining HOPE VI Main Street grants are required to submit applications to HUD, as explained in each NOFA. The information collection conducted in the applications enables HUD to conduct a comprehensive, merit-based selection process in order to identify and select the applications to receive funding. With the use of HUD-prescribed forms, the information collection provides HUD with sufficient information to approve or disapprove applications.

Applicants that are awarded HOPE VI Implementation grants are required to report on a quarterly basis on the sources and uses of all amounts expended for the Implementation grant revitalization activities. HOPE VI Implementation grantees use a fully-automated, internet-based process for the submission of quarterly reporting information. HUD reviews and evaluates the collected information and uses it as a primary tool with which to monitor the status of HOPE VI projects and the HOPE VI programs.

*Respondents* (*i.e.* affected public): Public Housing Agencies and units of local Governments.

| Collection | Respondents | Frequency per annum | Responses per annum | Burden per response | Burden per annum | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| HOPE VI Main Street Application: | | | | | | | |
| Main Street NOFA Narrative Exhibits | 5 | 0.5 | 2.5 | 80 | 200 | $57 | $11,400.00 |
| Main Street NOFA 52861 Application Data Sheet | 5 | 0.5 | 2.5 | 15 | 38 | 57 | 2,137.50 |
| Main Street NOFA Project Area Map | 5 | 0.5 | 2.5 | 1 | 3 | 57 | 142.50 |
| Main Street NOFA Program Schedule | 5 | 0.5 | 2.5 | 4 | 10 | 57 | 570.00 |
| Main Street NOFA Photographs of site | 5 | 0.5 | 2.5 | 5 | 13 | 57 | 712.50 |
| Main Street NOFA Five-year Pro-forma | 5 | 0.5 | 2.5 | 5 | 13 | 57 | 712.50 |
| Main Street NOFA Site Plan and Unit Layout | 5 | 0.5 | 2.5 | 10 | 25 | 57 | 1,425.00 |
| Subtotal | 5 | | 17.5 | | 300 | | 17,100.00 |
| Non-NOFA Collections: | | | | | | | |
| On-line Quarterly Reporting | 55 | 4 | 220 | 16 | 3,520 | 57 | 200,640.00 |
| 52825–A HOPE VI Budget updates | 40 | 1 | 75 | 2 | 150 | 57 | 8,550.00 |
| 53001–A Actual HOPE VI Cost Certificate | 20 | 1 | 20 | 0.5 | 10 | 57 | 570.00 |
| Subtotal | 115 | | 315 | | 3,680 | | 209,760.00 |
| Total Burden | | | | | 3,980 | | 226,860.00 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 31, 2018.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2018–24489 Filed 11–8–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7001–N–54]**

## 30-Day Notice of Proposed Information Collection: Voucher Management System (VMS), Section 8 Budget and Financial Forms

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* December 10, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, email: *OIRA Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 30, 2018 at 83 FR 36610.

**A. Overview of Information Collection**

*Title of Information Collection:* Voucher Management System (VMS), Section 8 Budget and Financial Forms.

*OMB Approved Number:* 2577–0282.

*Type of Request:* Reinstatement, without change, of a previously approved collection.

*Form Number:* Financial Forms: HUD–52672, HUD–52681, HUD–52681–B, HUD–52663 and HUD–52673. Originally, the HCV Financials were included in OMB Collection 2577–0169. Regulatory References 982.157 and 982.158. PHAs that administer the HCV program are required to maintain financial reports in accordance with accepted accounting standards in order to permit timely and effective audits. The HUD–52672 (Supporting Data for Annual Contributions Estimates Section 8 Housing Assistance Payments Program) and 52681 (Voucher for Payment of Annual Contributions and Operating Statement Housing Assistance Payments Program) financial records identify the amount of annual contributions that are received and disbursed by the PHA and are used by PHAs that administer the five-year Mainstream Program, MOD Rehab, and Single Room Occupancy. Form HUD–52663 (Suggested Format for Requisition for Partial Payment of Annual Contributions Section 8 Housing Assistance Payments Program) provides for PHAs to indicate requested funds and monthly amounts. Form HUD–52673 (Estimate of Total Required Annual Contributions Section 8 Housing Assistance Payments Program) allows PHAs to estimate their total required annual contributions. The required financial statements are similar to those prepared by any responsible business or organization.

The automated form HUD–52681–B (Voucher for Payment of Annual Contributions and Operating Statement Housing Assistance Payments Program Supplemental Reporting Form) is entered by the PHA into the Voucher Management System (VMS) on a monthly basis during each calendar year to track leasing and HAP expenses by voucher category, as well as data concerning fraud recovery, Family Self-Sufficiency escrow accounts, PHA-held equity, etc. The inclusion, change, and deletion of the fields mentioned below will improve the allocation of funds and allow the PHAs and the Department to realize a more complete picture of the PHAs' resources and program activities, promote financial accountability, and improve the PHAs' ability to provide assistance to as many households as possible while maximizing budgets. In addition, the fields will be crucial to the identification of actual or incipient financial problems that will ultimately affect funding for program participants. The automated form HUD–52681–B is also utilized by the same programs as the manual forms.

*Description of the need for the information and proposed use:* The Voucher Management System (VMS) supports the information management needs of the Housing Choice Voucher (HCV) Program and management functions performed by the Financial Management Center (FMC) and the Financial Management Division (FMD) of the Office of Public and Indian Housing and the Real Estate Assessment Center (PIH–REAC). This system's primary purpose is to provide a central system to monitor and manage the Public Housing Agency (PHAs) use of vouchers and expenditure of program funds, and is the base for budget formulation and budget implementation. The VMS collects PHAs' actual cost data that enables HUD to perform and control cash management activities; the costs reported are the base for quarterly HAP and Fee obligations and advance disbursements in a timely manner, and reconciliations for overages and shortages on a quarterly basis.

*Respondents (i.e. affected public):* Public Housing Authorities.

*Estimated Number of Respondents:* 3,110.

*Estimated Number of Responses:* 28,960.32.

*Frequency of Response:* 9.3120.

*Average Hours per Response:* 1.98687.

*Total Estimated Burdens:* 57,540.39.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 29, 2018.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2018–24490 Filed 11–8–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7005–N–23]**

## 60-Day Notice of Proposed Information Collection: Request for Termination of Multifamily Mortgage Insurance

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* January 8, 2019.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Brian A. Murray, Acting Director, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *brian.a.murray@hud.gov* or telephone (202) 402–2059. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Insurance Termination Request for Multifamily Mortgage.

*OMB Approval Number:* 2502–0416.

*OMB Expiration Date:* January 31, 2019.

*Type of Request:* Revision of currently approved collection.

*Form Number:* 9807.

*Description of the need for the information and proposed use:* This information collection is used for mortgagees to request HUD to terminate a mortgage insurance contract for an FHA-insured mortgage upon prepayment in full of the mortgage prior to its maturity date, or by an owner's and mortgagee's mutual agreement to voluntarily terminate the contract of mortgage insurance without a prepayment. Adjustments were necessary for the number of respondents and number of responses as the previous collection did not capture the correct information. This revision captures the correct information.

*Respondents (i.e. affected public):* Business (mortgage lenders).

*Estimated Number of Respondents:* 14,580.

*Estimated Number of Responses:* 14,580.

*Frequency of Response:* 1.

*Average Hours per Response:* .25.

*Total Estimated Burdens:* 3,645.

**B. Solicitation of Public Comment**

This Notice is soliciting comments from members of the public and affected agencies concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 18, 2018.

**Vance T. Morris,**

*Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2018–24488 Filed 11–8–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7002–N–12]**

## 0-Day Notice of Proposed Information Collection: Rural Capacity Building

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* January 8, 2019.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Diane Schmutzler, Management and Program Analyst, CPD, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Diane Schmutzler at *Diane.M.Schmutzler@hud.gov* or telephone 202–402–4385. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Schmutzler.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Rural Capacity Building.

*OMB Approval Number:* 2506–0195.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* SF–424, SF–424B, SF–LLL, HUD–2880, Multi-Year Budget Form (approval number pending this review).

*Description of the need for the information and proposed use:* The Rural Capacity Building for Community Development and Affordable Housing (RCB) program and the funding made available have been authorized by the Annual Appropriations Acts each year since FY 2012. The RCB program enhances the capacity and ability of rural housing development organizations, Community Development Corporations (CDCs), Community Housing Development Organizations (CHDOs), local governments, and Indian tribes (eligible beneficiaries) to carry out affordable housing and community development activities in rural areas for the benefit of low- and moderate-income families and persons. The RCB program achieves this by funding National Organizations with expertise in rural housing and rural community development who work directly to build the capacity of eligible beneficiaries. Applicants to the RCB program are required to submit certain information as part of their application for assistance, and as part of the requirements as a grantee.

*Respondents (i.e. affected public):* National Organizations that are 501(c)(3) organizations with experience working in rural areas.

*Estimated Number of Respondents:* 20 respondents.

*Estimated Number of Responses:* 20 responses per year.

*Frequency of Response:* Once a year.

*Average Hours per Response:* 44.25 hours.

*Total Estimated Burdens:* 885.00 hours.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Total annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| Application | | | | | | | |
| SF 424 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| SF 424B | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Multi-Year Budget | 20 | 1 | 20 | 3.00 | 60.00 | 45.00 | $2,700.00 |
| SF LLL | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| HUD 2880 | 20 | 1 | 20 | 0.25 | 5.00 | 45.00 | 225.00 |
| Rating Factor 1 | 20 | 1 | 20 | 8.00 | 160.00 | 45.00 | 7,200.00 |
| Rating Factor 2 | 20 | 1 | 20 | 8.00 | 160.00 | 45.00 | 7,200.00 |
| Rating Factor 3 | 20 | 1 | 20 | 12.00 | 240.00 | 45.00 | 10,800.00 |
| Rating Factor 4 | 20 | 1 | 20 | 8.00 | 160.00 | 45.00 | 7,200.00 |
| Rating Factor 5 | 20 | 1 | 20 | 5.00 | 100.00 | 45.00 | 4,500.00 |
| Reporting | | | | | | | |
| SF–425 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Totals | 20 | | | 44.25 | 885.00 | | 39,825.00 |

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 31, 2018.

**Neal Rackleff,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2018–24492 Filed 11–8–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7001–N–53]**

## 30-Day Notice of Proposed Information Collection: Office of Native American Program (ONAP) Training and Technical Assistance Evaluation Form

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* December 10, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 30, 2018 at 83 FR 36614.

### A. Overview of Information Collection

*Title of Information Collection:* Office of Native American Program (ONAP) Training and Technical Assistance Evaluation Form.

*OMB Approval Number:* 2577–New.

*Type of Request:* New Collection.

*Form Number:* HUD–5879.

*Description of the need for the information and proposed use:* The Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) authorizes funding for the Indian Housing Block Grant (IHBG) program that supports the development, management, and operation of affordable homeownership and rental housing; infrastructure development; and other forms of housing assistance intended for low-income persons. Federally-recognized Native American and Alaska Native tribes, tribally-designated housing entities, and the Department of Hawaiian Home Lands are eligible to receive IHBG funds.

HUD's Office of Native American Programs (ONAP) administers the IHBG program and offers contracted training and technical assistance to IHBG

recipients on program requirements. ONAP's Notice of Funding Availability for training and technical assistance services includes the requirement for the contractor(s) to use an OMB-approved evaluation form at all ONAP-sponsored events. At the end of each training and technical assistance event, participants are invited to voluntarily complete the Training and Technical Assistance Evaluation Form (form HUD–5879) to assess training and technical assistance effectiveness and solicit ideas for improvement. Form HUD–5879 is a one-page survey instrument and does not collect any personally identifiable information, including a participant's name.

*Respondents (i.e. affected public):* PHA leadership and staff.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Total burden hours | Hourly cost per responses | Annual cost |
|---|---|---|---|---|---|---|---|
| HUD–5879 | 40.00 | 200.00 | 8,000.00 | 0.2 | 1,600.00 | $36.00 | $57,600.00 |
| Total | 40.00 | 200.00 | 8,000.00 | 0.2 | 1,600.00 | 36.00 | 57,600.00 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 23, 2018.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2018–24491 Filed 11–8–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[189A2100DD/AAKC001030/A0A501010.999900]**

### Notice of Availability of a Draft Environmental Impact Statement for the Ho-Chunk Nation Fee-to-Trust and Casino Project, City of Beloit, Rock County, Wisconsin

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the City of Beloit, Wisconsin Department of Transportation, Ho-Chunk Nation (Nation), and the U.S. Environmental Protection Agency (EPA) serving as cooperating agencies, intends to file a Draft Environmental Impact Statement (DEIS) with the EPA in connection with the Nation's application for acquisition in trust by the United States of approximately 33 acres for gaming and other purposes to be located in the City of Beloit, Rock County, Wisconsin. This notice also announces that the DEIS is now available for public review and that a public hearing will be held to receive comments on the DEIS.

**DATES:** Written comments on the DEIS must arrive within 45 days after EPA publishes its Notice of Availability in the **Federal Register**. The date and location of the public hearing on the DEIS will be announced at least 15 days in advance through a notice to be published in local newspapers (The Daily News, The Janesville Gazette, and The Rockford Register Star) and online at: *http://www.ho-chunkbeloiteis.com.*

**ADDRESSES:** You may mail or hand-deliver written comments to the Midwest Regional Director, Bureau of Indian Affairs, Midwest Region, Norman Pointe II, Building, 5600 West American Boulevard, Suite 500, Bloomington, MN 55347. Please include your name, return address, and the caption: ''DEIS Comments, Ho-Chunk Nation Fee-to-Trust and Casino Project,'' on the first page of your written comments. See the **SUPPLEMENTARY INFORMATION** section of this notice for addresses where the DEIS is available for review.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy Guyah, Archaeologist, Bureau of Indian Affairs, Midwest Region, Norman Pointe II Building, 5600 West American Boulevard, Suite 500, Bloomington, MN 55347; phone: (612) 725–4512; email: *timothy.guyah@bia.gov.* Information is also available online at: *http://www.ho-chunkbeloiteis.com.*

**SUPPLEMENTARY INFORMATION:** Public review of the DEIS is part of the administrative process for the evaluation of the Tribe's application for the acquisition in trust of approximately 33 acres in the City of Beloit, Rock County, Wisconsin. The Nation proposes to develop a casino, hotel, parking, and supporting facilities. A Notice of Intent to prepare an EIS was published in the **Federal Register** on November 26, 2012, and in The Daily News, The Janesville Gazette, and The Rockford Register Star. The BIA held a public scoping meeting for the proposed project on December 13, 2012, at Aldrich Middle School, 1859 Northgate Drive, Beloit, Wisconsin 53511.

*Background:* The proposed project consists of the following components: (1) The Department's transfer of the approximately 33-acre fee property into trust status; (2) issuance of a determination by the Secretary of the Interior pursuant to the Indian Gaming Regulatory Act 25 U.S.C. 2701 *et seq.;* and (3) the Nation's proposed development of the trust parcel and its adjacent fee land, totaling approximately 73.5 acres. The proposed casino-hotel resort would include a hotel, convention center, outdoor amphitheater, several restaurant facilities, retail buildings, and parking facilities. Access to the project site would be provided via three driveways; one along Willowbrook Road and two along Colley Road.

The following alternatives are considered in the DEIS: (1) Proposed Project; (2) Reduced Casino and Commercial Development; (3) Retail Development; and (4) No Action/No Development. Environmental issues addressed in the DEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socio-economic conditions (including environmental justice), transportation and circulation, land use, public

services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth-inducing effects.

*Locations where the DEIS is available for review:* The DEIS will be available for review at the Beloit Public Library located at 605 Eclipse Blvd., Beloit, Wisconsin 53511, and online at *http://www.ho-chunkbeloiteis.com.* To obtain a compact disk copy of the DEIS, please provide your name and address in writing to Timothy Guyah, Bureau of Indian Affairs, Midwest Regional Office. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided only upon payment of applicable printing expenses by the requestor for the number of copies requested.

*Public comment availability:* Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

*Authority:* This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of l969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 6, 2018.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2018–24598 Filed 11–8–18; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[18X.LLAK930000.L13100000.EI0000.241A]**

### Notice of National Petroleum Reserve in Alaska 2018 Oil and Gas Lease Sale; Notice of Availability of the Detailed Statement of Sale for the NPR–A 2018 Oil and Gas Lease Sale

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for 254 tracts in the National Petroleum Reserve in Alaska (NPR–A).

**DATES:** The oil and gas lease sale bid opening will be at 10 a.m. (AKST) on Wednesday, Dec. 12, 2018. The BLM must receive all sealed bids by 4 p.m. (AKST), Monday, Dec. 10, 2018. The Detailed Statement of Sale for the NPR–A Oil and Gas Lease Sale 2018 will be available to the public on November 9, 2018.

**ADDRESSES:** Sealed bids must be received at the BLM Alaska State Office, ATTN: Carol Taylor (AK932); 222 West 7th Avenue, #13; Anchorage, Alaska 99513–7504. You may see the Detailed Statement of Sale from the BLM Alaska website at *https://www.blm.gov/alaska,* or request a copy from the BLM Alaska Public Information Center (Public Room), 222 West 7th Avenue, #13; Anchorage, Alaska 99513–7504; 907–271–5960.

**FOR FURTHER INFORMATION CONTACT:** Wayne Svejnoha, telephone 907–271–4407. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The December 2018 NPR–A Oil and Gas Lease Sale will include 254 tracts (approximately 2.85 million acres) available for leasing under the NPR–A Integrated Activity Plan/Environmental Impact Statement Record of Decision (ROD) finalized in February 2013.

The opening and reading of the bids for the 2018 NPR–A lease sale will be available via video livestreaming at *http://www.blm.gov/live.*

The Detailed Statement of Sale will include a description of the areas the BLM is offering for lease, as well as the lease terms, conditions, special stipulations, required operating procedures, and directions about how to submit bids. If you plan to submit a bid(s), please note that all bids must be sealed in accordance with the provisions identified in the Detailed Statement of Sale.

The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

**Authority:** 43 CFR 3131.4–1 and 42 U.S.C. 6506a.

**Ted A. Murphy,**

*Acting State Director, Alaska.*

[FR Doc. 2018–24586 Filed 11–8–18; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMA02000.L51010000.ER0000.17X LVRWG17G1360; NMNM 136976]**

### Notice of Intent To Prepare a Resource Management Plan Amendment and Environmental Impact Statement for the Borderlands Wind Project in Catron County, New Mexico; and Notice of Public Lands Segregation

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Socorro Field Office will prepare an Environmental Impact Statement (EIS), which includes a potential Plan Amendment to the 2010 Socorro Field Office Resource Management Plan (RMP) for a proposed commercial wind energy project located on public lands in Catron County, New Mexico. Publication of this Notice initiates the scoping process and opens a 30-day public comment period to solicit public comments and identify issues. Publication of this Notice also serves to segregate the public lands from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, subject to valid existing rights. This Notice initiates the public scoping process and the public lands segregation.

**DATES:** This notice initiates a 30-day public scoping period that will assist in preparation of the Draft EIS. Comments on issues may be submitted in writing until December 10, 2018.

The BLM expects to hold at least one public meeting in New Mexico during the scoping period, to provide an opportunity to review the proposal and project information. Announcements will be made by news release to the media and posted on the BLM's website listed below.

Comments must be received prior to the close of the scoping period in order to be included in the Draft EIS/Resource Management Plan Amendment (RMPA). The BLM will provide additional opportunities for public participation upon publication of the Draft EIS/RMPA.

**ADDRESSES:** You may submit comments or resource information related to the project by any of the following methods:

- *Website: https://www.blm.gov/site-page/programs-planning-and-nepa-plans-development-new-mexico-proposed-borderlands-wind-project.*
- *Mail:* Jim Stobaugh, National Project Manager, Bureau of Land Management Nevada State Office, Borderlands Wind Project, 1340 Financial Blvd., Reno, NV 89520.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to our mailing list, please contact Virginia Alguire, BLM Socorro Field Office, 901 South Hwy 85, Socorro, New Mexico 87801; phone (575) 838–1290, or email to *valguire@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Alguire during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On May 18, 2017, Borderlands Wind, LLC, submitted an application to the BLM requesting authorization to construct, operate, maintain, and terminate an up-to-100 megawatt commercial wind energy generation facility—Borderlands Wind Project (NMNM136976), in Catron County, New Mexico, within a boundary that encompasses approximately 40,348 acres of land managed by the BLM, the New Mexico State Land Office (SLO), and private landowners. The project would be located south of U.S. Route 60 in Catron County near Quemado, New Mexico, and the Arizona–New Mexico border. Approximately 28,989.38 of the 40,348 acres are located on lands managed by the BLM Socorro Field Office. The project would generally consist of approximately thirty-six 2.5-megawatt (MW) and four 2.3–MW General Electric (GE) wind turbine generators (WTG). Ancillary facilities such as access roads, underground collections, substation/switchyard, etc., would be located on lands administered by the BLM, SLO, or privately owned lands as needed.

Due to the potential impacts of the proposed Borderlands Wind Project, the BLM is preparing an EIS, and would be the lead agency. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and potential Plan Amendments. At present, the BLM has identified the following preliminary issues: Cultural resources; threatened, endangered, and sensitive species; visual resources; tribal interests; military training flight paths; and future reclamation/mitigation from wind turbine construction and location. The BLM will identify, analyze, and require on-site mitigation, as appropriate, to address the reasonably foreseeable impacts to resources from the approval of this project. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and may be considered on multiple scales to address the associated impact.

The BLM will use and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Native American Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, state, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Borderlands Wind Project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate in the development of the environmental analysis as a cooperating agency.

Authorization of this proposal requires amendments to the 2010 Socorro Field Office RMP to modify the visual resource management class in the project area and to modify a right-of way (ROW) avoidance area. By this notice, the BLM is complying with requirements 43 CFR 1610.2(c) to notify the public of potential amendments to the 2010 Socorro Field Office RMP. The BLM will integrate the land use planning process with the NEPA analysis process for this project.

The BLM encourages comments concerning the proposed Borderlands Wind energy generation facility, feasible alternatives, possible measures to minimize and/or avoid adverse environmental impacts, and any other information relevant to the proposed action. You may submit comments in writing to the BLM at any public scoping meeting or at any time by using one of the methods listed in the **ADDRESSES** section of this notice. Public scoping meetings will be conducted in an open house format with BLM staff and representatives from Borderlands Wind, LLC available to explain project details and gather information from interested individuals or groups. You should submit comments by the close of the 30-day scoping period.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any persons wishing to be added to a mailing list of interested parties can call or write to the BLM, as described in this Notice. Additional information meetings may be conducted throughout the process to keep the public informed of the progress of the EIS.

**Segregation of the Public Lands**

In accordance with 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f), the BLM is segregating the public lands within the proposed ROW area from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or the Material Sales Acts, for a period of up to 2 years in order to promote the orderly administration of the public lands. This temporary segregation is subject to valid existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated

under this Notice are legally described as follows:

**New Mexico Principal Meridian, New Mexico**

T. 1 S, R. 19 W,
Sec. 10, All;
Sec. 15, lots 1 thru 4;
Sec. 17, SE¼NE¼, SW¼NE¼, SE¼, SW¼;
Sec. 20, All;
Sec. 21, SE¼;
Sec. 29, All;
Sec. 30, All;
Sec. 31, All;
Sec. 33, All;
Area described approximate 5051.28 acres.

**New Mexico Principal Meridian, New Mexico**

T. 2 S, R. 19 W,
Sec. 4, lots 2 and 3, SE¼NW¼, SW¼NW¼, SW¼;
Secs. 5 thru 8;
Sec. 9, N½;
Secs. 17 thru 19;
Sec. 20, lots 1 thru 5, S½SE¼, NE¼SE¼;
Sec. 30, lots 3 thru 14, W½SW¼, E½SW¼;
Area described approximate 6268.11 acres.

*New Mexico Principal Meridian, New Mexico*

T. 1 S, R. 20 W,
Sec. 25, All;
Sec. 26, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, NE¼, lots 13 and 14, N½SE¼;
Sec. 33, lots 1 thru 4, NE¼SW¼, NW¼SW¼, NE¼SE¼, NW¼SE¼;
Sec. 34, lots 1 thru 4, NE¼, NE¼SW¼, NW¼SW¼, NE¼SE¼, NW¼SE¼;
Sec. 35, All;
Area described approximate 3688.25 acres.

**New Mexico Principal Meridian, New Mexico**

T. 2 S, R. 20 W,
Sec. 1, All;
Secs. 3 thru 5;
Sec. 6, lots 1 and 2, SE¼NE¼,SW¼NE¼;
Sec. 9, W½;
Sec. 10, E½,SE¼SW¼;
Secs. 11 thru 15;
Secs. 21 thru 28;
Secs. 33 thru 35;
Area described approximate 13601.49 acres.

**New Mexico Principal Meridian, New Mexico**

T. 3 S, R. 20 W,
Sec. 3, lots 5 thru 12;
Sec. 4, lots 5 thru 8.
Area described approximate 380.25 acres.

The areas described contain approximately 28,989.38 acres, according to the official plats of the surveys and protraction diagrams of the lands on file with the BLM.

As provided in the 43 CFR 2804.25(f), the segregation of lands in this Notice will not exceed 2 years from the date of publication of this Notice, though it can be extended for up to 2 additional years through publication of a new notice in the **Federal Register**.

Termination of the segregation occurs on the earliest of the following dates: Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; automatically at the end of the segregation; or upon publication of a **Federal Register** notice of termination of the segregation. Upon termination of segregation of these lands, all lands subject to this segregation will automatically reopen to appropriation under the public land laws.

**Authority:** 40 CFR 1501.7, 43 CFR 1610.2. 43 CFR 2091.3–1, and 43 CFR 2804.25(f).

**Timothy R. Spisak,**

*Acting BLM New Mexico State Director.*

[FR Doc. 2018–24401 Filed 11–8–18; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[RR83570000, 190R5065C6, RX.59389832.1009676; OMB Control Number 1006–0003]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Bureau of Reclamation Use Authorization Application

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before December 10, 2018.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Jason Kirby, Bureau of Reclamation, Office of Policy and Administration, 84–57000, P.O. Box 25007, Denver, CO 80225–0007; or by email to *jkirby@usbr.gov.* Please reference OMB Control Number 1006–0003 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jason Kirby by email at *jkirby@usbr.gov,* or by telephone at (303) 445–2895. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A Federal Register notice with a 60-day public comment period soliciting comments on this collection of information was published on August 14, 2018 (83 FR 40334). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Reclamation is responsible for approximately 6.5 million acres of land which directly support Reclamation's Federal water projects in the 17 Western States. Under Title 43 CFR part 429, individuals or entities wanting to use Reclamation's lands, facilities, or waterbodies must apply using Form 7–2540. Examples of such uses are:

—Agricultural uses such as grazing and farming;

—commercial or organized recreation and sporting activities;

—other commercial activities such as ''guiding and outfitting'' and ''filming and photography;'' and,

—resource exploration and extraction, including sand and gravel removal and timber harvesting.

We review applications to determine whether granting individual use authorizations are compatible with Reclamation's present or future uses of the lands, facilities, or waterbodies. When we find a proposed use compatible, we advise the applicant of the estimated administrative costs and estimated application processing time. In addition to the administrative costs, we require the applicant to pay a use fee based on a valuation or by competitive bidding. If the application is for construction of a bridge, building, or other significant construction project, Reclamation may require that all plans and specifications be signed and sealed by a licensed professional engineer.

*Title of Collection:* Bureau of Reclamation Use Authorization Application.

*OMB Control Number:* 1006–0003.

*Form Number:* Form 7–2540.

*Type of Review:* Extension without change of a currently approved collection. *Respondents/Affected Public:* Individuals, corporations, companies, and State and local entities who want to use Reclamation lands, facilities, or waterbodies.

*Total Estimated Number of Annual Respondents:* 225.

*Total Estimated Number of Annual Responses:* 225.

*Estimated Completion Time per Response:* 2 hours.

*Total Estimated Number of Annual Burden Hours:* 450 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Each time a use authorization is requested.

*Total Estimated Annual Nonhour Burden Cost: $* 78,750.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

**Gayle Kunkel-Shields,**

*Acting Director, Policy and Administration.*

[FR Doc. 2018–24603 Filed 11–8–18; 8:45 am]

**BILLING CODE 4332–90–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. TA–131–043 and TPA–105–004]**

## U.S.-Japan Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Currently Dutiable Imports; Institution of Investigation and Scheduling of Hearing

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of investigation and scheduling of a public hearing.

**SUMMARY:** Following receipt on October 26, 2018, of a request from the United States Trade Representative (USTR), the Commission instituted Investigation Nos. TA–131–043 and TPA–105–004, *U.S.-Japan Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Currently Dutiable Imports.*

**DATES:**

*November 26, 2018*: Deadline for filing requests to appear at the public hearing.

*November 30, 2018:* Deadline for filing prehearing briefs and statements.

*December 6, 2018:* Public hearing.

*December 13, 2018:* Deadline for filing post-hearing briefs and submissions.

*December 13, 2018:* Deadline for filing all other written statements.

*January 24, 2019:* Transmittal of Commission report to the USTR.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/internal/*.

**FOR FURTHER INFORMATION CONTACT:** Project Leader Justino De La Cruz (202–205–3252 or *justino.delacruz@usitc.gov*) or Deputy Project Leader Saad Ahmad (202–205–3331 or *saad.ahmad@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

*Background:* In his letter of October 26, 2018, the USTR requested that the Commission provide certain advice under section 131 of the Trade Act of 1974 (19 U.S.C. 2151) and an assessment under section 105(a)(2)(B)(i)(III) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4204(a)(2)(B)(i)(III) with respect to the effects of providing duty-free treatment for imports of products from Japan.

More specifically, the USTR, under authority delegated by the President and pursuant to section 131 of the Trade Act of 1974, requested that the Commission provide a report containing its advice as to the probable economic effect of providing duty-free treatment for imports of currently dutiable products from Japan on (i) industries in the United States producing like or directly competitive products, and (ii) consumers. The USTR asked that the Commission's analysis consider each article in chapters 1 through 97 of the *Harmonized Tariff Schedule of the United States* (HTS) for which U.S. tariffs will remain, taking into account implementation of U.S. commitments in the World Trade Organization. The USTR asked that the advice be based on the HTS in effect during 2018 and trade data for 2017.

In addition, the USTR requested that the Commission prepare an assessment, as described in section 105(a)(2)(B)(i)(III) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, of the probable economic effects of eliminating tariffs on imports from Japan of those agricultural products described in the list attached to the USTR's request letter on (i) industries in the United States producing the products concerned, and (ii) the U.S. economy as a whole. The USTR's request letter and list of agricultural products are posted on the Commission's website at *http://www.usitc.gov.*

As requested, the Commission will provide its report to the USTR as soon as possible. The USTR indicated that those sections of the Commission's report that relate to the advice and assessment of probable economic effects will be classified. The USTR also indicated that he considers the

Commission's report to be an interagency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege.

*Public Hearing:* A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on December 6, 2018. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., November 26, 2018, in accordance with the requirements in the ''Submissions'' section below. All prehearing briefs and statements should be filed not later than 5:15 p.m., November 30, 2018, and all post-hearing briefs and statements should be filed not later than 5:15 p.m., December 13, 2018. For further information, call 202–205–2000.

*Written Submissions:* In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., December 13, 2018. All written submissions must conform to the provisions of § 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. Eastern Time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

*Confidential Business Information.* Any submissions that contain confidential business information must also conform to the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. Additionally, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel (a) for cybersecurity purposes or (b) in monitoring user activity on U.S. government classified networks. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

*Summaries of Written Submissions:* Persons wishing to have a summary of their position included in the report should include a summary with their written submission and should specifically identify the summary as being for this purpose. The summaries will be published in an appendix to the report. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: November 7, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–24704 Filed 11–8–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–611 and 731–TA–1428 (Preliminary)]**

## Aluminum Wire and Cable From China

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum wire and cable from China that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### Background

On September 21, 2018, Encore Wire Corporation, McKinney, Texas, and Southwire Company, LLC, Carrollton, Georgia, filed petitions with the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 83 FR 52811 and 83 FR 52805 (October 18, 2018).

Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of aluminum wire and cable from China. Accordingly, effective September 21, 2018, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–611 and antidumping duty investigation No. 731–TA–1428 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 27, 2018 (83 FR 48864). The conference was held in Washington, DC, on October 12, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 5, 2018. The views of the Commission are contained in USITC Publication 4843 (November 2018), entitled *Aluminum Wire and Cable from China: Investigation Nos. 701–TA–611 and 731–TA–1428 (Preliminary).*

By order of the Commission.

Issued: November 5, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–24510 Filed 11–8–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–610 and 731–TA–1425–1427 (Preliminary)]**

### Refillable Stainless Steel Kegs From China, Germany, and Mexico

#### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of refillable stainless steel kegs from China, Germany, and Mexico that are alleged to be sold in the United States at less than fair value (''LTFV'') and by reason of imports subsidized by the government of China.[2]

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### Background

On September 20, 2018, American Keg Company, LLC, Pottstown, Pennsylvania filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of refillable stainless steel kegs from China and LTFV imports of refillable stainless steel kegs from China, Germany, and Mexico. Accordingly, effective September 20, 2018, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–610 and antidumping duty investigation Nos. 731–TA–1425–1427 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 26, 2018 (83 FR 48652). The conference was held in Washington, DC, on October 11, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 5, 2018. The views of the Commission are contained in USITC Publication 4844 (November 2018), entitled *Refillable Stainless Steel Kegs from China, Germany, and Mexico: Investigation Nos. 701–TA–610 and 731–TA–1425–1427 (Preliminary).*

By order of the Commission.

Issued: November 5, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–24515 Filed 11–8–18; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on October 25, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The U.S. National Archives and Records Administration, New York, NY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 83 FR 52192 and 83 FR 52195 (October 16, 2018).

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on August 15, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2018 (83 FR 44904).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2018–24542 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Registration

**ACTION:** Notice of registration.

**SUMMARY:** The registrant listed below has applied for and been granted registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of various classes of schedule I and II controlled substances.

**SUPPLEMENTARY INFORMATION:** The company listed below applied to be registered as bulk manufacturer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted for this notice.

| Company | FR citation | Published |
|---|---|---|
| Euticals Inc ... | 83 FR 39129 | August 8, 2018. |

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: October 29, 2018.

**John J. Martin,**

*Assistant Administrator.*

[FR Doc. 2018–24484 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Chattem Chemicals

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 8, 2019.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:**

The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on August 2, 2018, Chattem Chemicals, 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409–1237 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Gamma Hydroxybutyric Acid | 2010 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| 4-Methoxyamphetamine | 7411 | I |
| Dihydromorphine | 9145 | I |
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| Lisdexamfetamine | 1205 | II |
| Methylphenidate | 1724 | II |
| Codeine | 9050 | II |
| Dihydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Hydrocodone | 9193 | II |
| Levorphanol | 9220 | II |
| Methadone | 9250 | II |
| Methadone intermediate | 9254 | II |
| Morphine | 9300 | II |
| Oripavine | 9330 | II |
| Thebaine | 9333 | II |
| Oxymorphone | 9652 | II |
| Noroxymorphone | 9668 | II |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Tapentadol | 9780 | II |
| Fentanyl | 9801 | II |

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

In reference to drug code 7360 (marihuana) and 7370 (tetrahydrocannabinols) the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: October 25, 2018.

**John J. Martin,**

*Assistant Administrator.*

[FR Doc. 2018–24485 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1105–0025]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Federal Coal Lease Request

**AGENCY:** Antitrust Division, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Antitrust Division (ATR), 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.

**DATES:** Comments are encouraged and will be accepted for 30 days until December 10, 2018.

**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 Jill Ptacek, Attorney, Antitrust Division, United States Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530 (phone: 202–307–6607).

**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:* Federal Coal Lease Reserves.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are ATR–139 and ATR–140. The applicable component within the Department of Justice is the Antitrust Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for profit. Other: None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

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 10 respondents will complete each form, with each response taking approximately two hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 20 annual burden hours associated with this collection, in total.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: November 6, 2018.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2018–24544 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–12–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On October 31, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States and Louisiana Department of Environmental Quality* v. *Evangeline Enterprises LLC,* Civil Action No. 17–01340.

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, together with the Louisiana Department of Environmental Quality (''LDEQ''), sought penalties and injunctive relief under the Clean Water Act and the Louisiana Environmental Quality Act against Evangeline Enterprises LLC (''Evangeline'') for continuous unauthorized discharges of pollutants from Evangeline's race horse training facility in Carencro, Louisiana to waters of the United States and waters of the State of Louisiana. The proposed Consent Decree will resolve the claims alleged by the United States and LDEQ and requires Evangeline to pay $300,000 in civil penalties and perform injunctive relief to bring its facility into compliance with applicable federal and state laws and regulations to prevent future discharges to area waterways.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Louisiana Department of Environmental Quality* v. *Evangeline Enterprises LLC,* D.J. Ref. No. 90–5–1–1–11485. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Thomas Carroll,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2018–24606 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Settlement Agreement and Draft Restoration Plan Under the Oil Pollution Act, the Clean Water Act, and the System Unit Resource Protection Act

Notice is hereby given that the United States of America, on behalf of the Department of the Interior (''DOI'') acting through the National Park Service and the Fish and Wildlife Service, the Department of Commerce (''DOC'') acting through the National Oceanic and Atmospheric Administration (''NOAA'') and the District of Columbia, on behalf of the Department of Energy and Environment (collectively ''Trustees''), are providing an opportunity for public comment on a proposed Settlement Agreement (''Settlement Agreement'') among the Trustees and Pepco, LLC (''Pepco''). The Trustees are also providing notice of an opportunity for public comment on a draft Damage Assessment and Restoration Plan (''draft DARP'').

The settlement resolves the civil claims of the Trustees against Pepco arising under their natural resource trustee authority under the Oil Pollution Act, the Clean Water Act, the System Unit Resource Protection Act, and applicable state law for injury to, impairment of, destruction of, and loss of use of natural resources as a result of a January 23, 2011 oil spill at the Pepco Potomac River Substation located in Alexandria, Virginia (''Oil Spill''). The Oil Spill occurred when a pipe broke at the Potomac River Substation, discharging approximately 17,000 gallons of mineral oil dielectric fluid, of which 4,500 gallons were discharged into the Potomac River. Under the proposed Settlement Agreement, Pepco agrees to pay $326,532 to the DOI Natural Resource Damage Assessment and Restoration Fund to be used to restore, replace, rehabilitate or acquire the equivalent of, those resources injured by the Oil Spill and to compensate the public for lost recreational opportunities, as proposed in the draft DARP. In addition, Pepco agrees to pay $53,259 to the Trustees for past assessment costs and an additional $50,000 to the Trustees for restoration planning and oversight costs. Pepco will receive from the Trustees a covenant not to sue for the claims resolved by the settlement, including assessment costs.

In accordance with the OPA, the Trustees have also written a draft DARP that describes proposed alternatives for restoring the natural resources and natural resource services injured by the Oil Spill. The two preferred restoration alternatives selected by the Trustees in the Draft DARP are the operation and maintenance of a Trash Cage Project on the Anacostia River, a tributary to the Potomac River, and the restoration and rehabilitation of vegetation proximate to the Potomac River in the George Washington Memorial Parkway.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement and draft DARP. Comments on the proposed Settlement Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to the Pepco Potomac River Substation Settlement Agreement, DJ No. 90–5–1–1–11456. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Comments on the draft DARP may be submitted to the Trustees either electronically or by mail. Comments on the draft DARP may be submitted electronically at *https://parkplanning.nps.gov/PepcoPotomacSpill.* Written comments on the draft DARP should be addressed to Superintendent, George Washington Memorial Parkway Headquarters, Attn. Pepco Draft DARP, 700 George Washington Memorial Parkway, McLean, VA 22101. Please reference: Pepco Potomac River Substation Settlement Agreement, DOI–SOL–ERB–2018–002. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

During the public comment period, a copy of the draft DARP will be available electronically at *https://parkplanning.nps.gov/PepcoPotomacSpill.* A copy of the draft DARP may also be examined at the George Washington Memorial Parkway office. Arrangements to view the documents must be made in advance by contacting the Natural Resource Division at (703) 289–2500.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2018–24520 Filed 11–8–18; 8:45 am]

**BILLING CODE 4410–15–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[CONSOLIDATED Docket No. 16–CRB–0009 CD (2014–17); CONSOLIDATED Docket No. 16–CRB–0010–SD (2014–17)]**

### Distribution of Cable and Satellite Royalty Funds

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of consolidation of dockets and request for comments.

**SUMMARY:** The Copyright Royalty Judges (Judges) are requesting comments regarding whether controversies exist among claimants relating to distribution of the cable and satellite television retransmission royalty funds deposited with the U.S. Copyright Office for royalty years 2014 through 2017.

**DATES:** Comments are due on or before December 10, 2018.

**ADDRESSES:** You may submit comments regarding cable distribution controversies, identified by CONSOLIDATED Docket No. 16–CRB–0009 CD (2014–17), and comments regarding satellite distribution controversies, identified by CONSOLIDATED Docket No. 16–CRB–0010–SD (2014–17), by any of the following methods:

*CRB's electronic filing application:* Submit comments online in eCRB at *https://app.crb.gov/.*

*U.S. mail:* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. *Deliver to:* Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

*Instructions:* Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and one of the docket numbers. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided. Electronic documents (including those submitted on CD together with paper copies) should conform to the Judges' regulations at 37 CFR 350.3 and 350.5.

*Docket:* For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket numbers 16–CRB–0009 CD (2014–17) or 16–CRB–0010–SD (2014–17).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine-Brown, CRB Program Specialist, by telephone at (202) 707–7658, or by email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Each year cable systems and satellite carriers must submit royalty payments to the Register of Copyrights as required by the statutory licenses described in sections 111 and 119 of the Copyright Act for the retransmission to cable and satellite subscribers, respectively, of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d), 119(b). The deposited royalties are to be distributed to copyright owners whose works were included in a qualifying transmission and who timely filed claims for royalties. Distribution of the deposited royalties occurs in one of two ways. In the first instance, the Judges may distribute royalty funds in accordance with a negotiated settlement among eligible claimants. 17 U.S.C. 111(d)(4)(A), 119(b)(5)(A). If the Judges determine there is a controversy regarding royalty distribution, the Judges conduct a proceeding to determine distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 119(b)(5)(B).

By Orders dated November 5, 2018, the Judges consolidated the dockets, assigning the cable distribution matters to CONSOLIDATED Docket No. 16–CRB–0009 CD (2014–17) and assigning the satellite distribution matters to CONSOLIDATED Docket No. 16–CRB–0010–SD (2014–17). The Judges seek comments on the existence and extent of any controversies regarding distribution of the 2014 through 2017 cable and satellite royalty funds.

Dated: November 5, 2018.

**Suzanne Barnett,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2018–24516 Filed 11–8–18; 8:45 am]

**BILLING CODE 1410–72–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2019–007]**

### Advisory Committee on the Records of Congress

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress.

**DATES:** The meeting will be on December 3, 2018, from 10:00 a.m. to 11:30 a.m.

**ADDRESSES:** This meeting will take place at the U.S. Capitol Visitor Center, SVC 210–212, located beneath the East Front plaza of the U.S. Capitol at First Street and East Capitol Street.

**FOR FURTHER INFORMATION CONTACT:** Sharon Shaver, Center for Legislative Archives, by email at *sharon.shaver@nara.gov,* or by telephone at 202. 357.6802.

**SUPPLEMENTARY INFORMATION:** The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Legislative Archives, Presidential Libraries, and Museum Services (LPM).

The meeting is open to the public. Due to building security measures, attendees will go through entry screening and may not bring certain items into the building. Please see *https://www.visitthecapitol.gov/plan-visit/prohibited-items* for a list of prohibited items.

**Agenda**

(1) Chair's opening remarks—Clerk of the U.S. House of Representatives

(2) Recognition of co-chair—Secretary of the U.S. Senate

(3) Recognition of the Archivist of the United States

(4) Approval of the minutes of the last meeting

(5) House Archivist's report

(6) Senate Archivist's report

(7) Center for Legislative Archives update

(8) Other current issues and new business

**Miranda J. Andreacchio,**

*Committee Management Officer.*

[FR Doc. 2018–24513 Filed 11–8–18; 8:45 am]

**BILLING CODE 7515–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84533; File No. SR–ICEEU–2018–015]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Limited Liquidity Plan

November 5, 2018.

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 October 22, 2018, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to amend its Liquidity Plan to reflect changes in its treasury arrangements and certain other enhancements. The amendments do not involve any changes to ICE Clear Europe's Clearing Rules or Procedures.[3]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is proposing to make certain amendments to its Liquidity Plan to address changes in its treasury activities and to make certain enhancements to liquidity risk stress testing scenarios and other clarifications.

The approved financial institution (''AFI'') default and AFI plus Member default liquidity stress testing scenarios have been revised to refer to AFIs (such as investment agents and custodians) more generally, rather than to specific institutions. For example, in the AFI default liquidity stress testing scenario, sources used for risk tolerance and risk appetite evaluation have been revised to refer to non-defaulting investment agents, rather than a specific bank. In the AFI plus member default scenario, the scenario has been revised to be based on a default of an AFI (investment agent or custodian) as liquidity provider and clearing member, and sources used for evaluation would look at a non-defaulting service provider. These changes reflect that the Clearing House may use a number of different AFIs, and thus will assist the Clearing House in keeping the Liquidity Plan up to date as service providers change. The amendments also facilitate use by the Clearing House of additional treasury service providers, consistent with its other policies and procedures, which will help the Clearing House appropriately manage risks from treasury operations.

The amendments also add a new Central Securities Depository (CSD) default scenario. This is defined as the relevant CSD (the Federal Reserve (for USD securities), Euroclear Bank (for Euro securities) or Euroclear UK & Ireland (for GBP securities)) being unable to process settlements. Under this scenario, available liquidity is assessed against the expected net cash payment outflow for a single day on a per currency basis, to determine if such a default could result in a delay in payment to clearing members.

Certain other updates and clarifications have been made to the liquidity stress testing scenarios and related sources used in risk tolerance and risk appetite evaluations. These include amendments to address reliance on intra-day overdraft facilities and eliminate references to an ICE Inc. (the parent company of ICE Clear Europe) credit facility. In calculating the investment loss component of liquidity stress losses in clearing member default scenario, the amendments clarify that time deposits are assumed to have a 100% liquidity loss, similar to other unsecured investments. The amendments also clarify certain arrangements with respect to cross-currency investment for purposes of liquidity stress testing. U.S. dollar cash can, in certain circumstances, be invested through reverse repurchase agreements in assets denominated in Euro or pounds sterling, but for scenarios that look at cash invested with a one-day maturity, such investments will be excluded from available liquidity resources. The amended plan notes that cross-currency investments for Euro and British pounds sterling balances are not permitted.

The amendments update a table of key risk and performance indicators (KRPIs) used by the Clearing House to determine if investments meet the credit and liquidity standards set out in Clearing House investment policies. Additional KRPIs included in the Liquidity Plan address such indicators as rating checks for unsecured investments, repo counterparties and sovereigns; the level of sovereign purchases; matching of the currency of investment and underlying collateral; collateral coverage; and repo balance per counterparty by rating. The KRPI for unsecured investment tenor is reduced to one business day. The KRPI for aggregate reverse repo balance is reduced from 55% of total investments to 50%. The KRPI for reverse repo tenor is revised to be less than or equal to 37 days. Certain other clarifications and typographical corrections are also made.

The amendments also update cross-references to various treasury standard operating procedures used by the Clearing House.

Certain internal reporting processes have been streamlined. A number of weekly and monthly reports would no longer be provided on a routine basis to the Board Risk Committee and the Board. New governance reporting requirements have been added instead, with (i) certain liquidity metrics (including breaches) being provided to the Audit Committee, (ii) collateral and investment data, APS performance and exposure, liquidity metrics and assessments, and KRPI data being provided to the Board, and (iii) a liquidity management summary and certain other summary data being provided to the Business Risk Committee. ICE Clear Europe believes that these amendments will enhance oversight of Clearing House liquidity risk management.

Certain clarifications are made to provisions relating to the annual testing of the Liquidity Plan. In addition, the amendments also provide that at least on an annual basis, the Liquidity Plan will be reviewed by the Executive Risk Committee (instead of the Business Control Committee).

The appendices have been edited to remove an unnecessary list of risk default scenarios.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[5] Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. In addition, Rule 17Ad–22(e)(7) [7] requires covered clearing agencies to effectively measure, monitor and manage their liquidity risk, including through liquidity stress testing.[8]

The proposed amendments to the Liquidity Plan are designed to update and strengthen the clearing house's policies and procedures relating to liquidity risk management, in light of these requirements. In particular, the revised policies will enhance certain liquidity stress testing scenarios, by more readily taking into account relevant changes in treasury service providers in AFI failure scenarios and addressing the possibility of a CSD failure through the CSD default scenario. The amendments also update monitoring metrics and standards, including through revised KRPIs. In addition, the revisions improve internal reporting and oversight of liquidity risk management, and specify the appropriate governance framework for review of liquidity stress testing and related metrics and parameters, among other matters. In ICE Clear Europe's view, the amendments thereby enhance the ability of the clearing house to assess potential liquidity events that may affect its ability to conduct settlements for cleared transactions, which in turn will strengthen its ability to manage such events in order to continue clearing house operations. As such, ICE Clear Europe believes that the changes will promote the prompt and accurate settlement of securities and derivatives transactions and, in general, protect investors and the public interest within the meaning of Section 17A(b)(3)(F).[9] Furthermore, and for similar reasons, ICE Clear Europe believes that the amendments are consistent with the specific liquidity testing and monitoring requirements of Rule 17Ad–22(e)(7).[10]

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to enhance the Clearing House's own liquidity stress testing procedures. The amendments are not expected to change the rights or obligations of Clearing Members or the terms or conditions of any cleared contract. In addition, the amendments should not materially affect the cost of clearing for Clearing Members or other market participants, and should not otherwise affect accessing to clearing for any market participants. As a result, the amendments should not affect competition among Clearing Members or other market participants.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such 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–ICEEU–2018–015 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–ICEEU–2018–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation#rule-filing.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2018–015 and should be submitted on or before November 30, 2018.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(7).

[8] Specifically, Rule 17Ad–22(e)(7)(vi) requires that the covered clearing agency:

''(vi) Determin[e] the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under paragraph (e)(7)(i) of this section by, at a minimum:

(A) Conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. . . .'' 17 CFR 240.17Ad–22(e)(7).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(7).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24521 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84536; File No. SR–Phlx–2018–63]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1101A, Terms of Option Contracts

November 5, 2018.

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 October 23, 2018, Nasdaq PHLX LLC (''Phlx'' or the ''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 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 Exchange Rule 1101A, Terms of Option Contracts.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.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 adopt new Exchange Rules 1101A(e)(I), 1101A(f) and 1101A(g). Proposed Rules 1101A(e)(I) and 1101A(g) would establish the manner of determining an underlying index component security's price for purposes of calculating the current index value at expiration of an overlying index option when (i) the primary market for that security does not open for trading on a given day, and (ii) the Options Clearing Corporation (''OCC'') does not exercise its authority to establish the index option settlement value.[3] They also acknowledge OCC's authority under its own rules and by-laws to establish settlement prices in certain circumstances. Proposed new Rule 1101A(f) clarifies an issue relating to the level of indexes underlying A.M.-settled index options at expiration.

Proposed Rules 1101A(e)(I) and (g)

Exchange Rule 1101A(e) currently states that the current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under Exchange rules and OCC rules, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, *except* that in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. The Exchange now proposes to add new Rule 1101A(g) to deal expressly with cases where the entire primary market for an underlying component security is *not* open on that day. Rule 1101A(g) would apply to both A.M.-settled and P.M.-settled index options.[4]

Proposed Rule 1101A(g) would add an exception and would state that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used. Proposed new Rule 1101A(g) would permit market participants the certainty of knowing the settlement value on the day on which the primary market fails to open. Additionally, the provision would eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.[5]

The new rule would also state that this procedure shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.[6] The proposed language makes clear that Rule 1101A(g) would *not* apply in the event that OCC exercises its authority to determine settlement prices. Rather, the proposed new language would apply only when a primary market does not open and OCC elects not to exercise its authority to intervene and take action to establish a settlement price. The Exchange would otherwise defer to

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Three of the Exchange's affiliated options exchanges, Nasdaq ISE, LLC (''ISE''), The Nasdaq Stock Market LLC (''Nasdaq'') and Nasdaq BX, Inc. (''BX''), will also be proposing rule changes relating to the manner of determining an underlying index component security's price for purposes of calculating the current index value at expiration of an index option under these circumstances. *See* SR–NASDAQ–2018–081, SR–BX–2018–049, and SR–ISE–2018–88. The Exchange desires its rules to be aligned with those of the affiliated exchanges.

[4] P.M.-settled options are settled based upon the closing index value for the day on which the index options contract is exercised in accordance with OCC rules or, if such day is not a business day, for the most recent business day. *See* Phlx Rule 1101A(d).

[5] The index calculator for the NDX, MNX and BKX indexes, which are products traded on Nasdaq affiliated exchanges, uses the previous day's closing price if components of the index do not open.

[6] *See* OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a ''required value'') for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that OCC may be entitled to take under OCC's bylaws and rules, the, OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount. Proposed Rule 1101A(g) would apply to both A.M.-settled and P.M.-settled index options.

OCC. A cross-reference to Rule 1101A(g) would be added to Rule 1101A(e) by adding new Rule 1101A(e)(I).

Proposed Rule 1101A(e)(I) is based upon Chapter XIV, Section 11(a)(5)(i) of the Nasdaq Rulebook.

Proposed Rule 1101A(f)

Separately, the Exchange proposes to adopt new Rule 1101A(f), Index Level, intended to alert investors to the fact that the exercise settlement value of an index option that is derived from opening prices of the constituent securities (an ''A.M.-settled index option'') may not be reported for several hours following the opening of trading in those securities. A number of updated index levels may be reported at and after the opening before the exercise settlement value is reported, and there could be a substantial divergence between those reported index levels and the reported exercise settlement value. The proposed new rule would provide that the reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities. Proposed new Rule 1101A(f) is based upon Chapter XIV, Section 11(d) of the Nasdaq rulebook.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] 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.

As noted above, proposed Rules 1101A(e)(I) and (g) would establish clearly the procedure for determination of an index component security's price in the event that the primary market for the security fails to open. By adopting the proposed rule, the Exchange would provide certainty to the market regarding the procedure it would follow in the absence of action by OCC. Additionally, it would provide market participants with the certainty of knowing the settlement value on the day on which the primary market fails to open.

It would also acknowledge clearly, however, that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

Likewise, proposed Rule 1101A(f) states clearly that the reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities, again protecting investors and the public interest by reducing potential for confusion arising from the fact that the exercise settlement value of an index option derived from opening prices of constituent securities may diverge from reported index levels.

*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 not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by setting forth clearly the manner in which index option settlement values will be determined if the primary market for a security underlying the current index value of an index option does not open for trading, and by stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws. The proposal also provides clarity regarding the calculation of the index level, as distinct from the exercise settlement value, on the last day of trading in the underlying component securities of an A.M.-settled index option.

*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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the 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 and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide certainty regarding the determination of settlement prices for index options when the primary market for a security underlying the current index value of an index option does not does not open for trading on an expiration day, including in instances in which OCC exercises its authority to determine the settlement price. The Exchange also noted that the proposed rule change will provide clarity by informing the market that the reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in the underlying securities. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

interest and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–63 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–Phlx–2018–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–63, and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24523 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[14] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33288; 812–14924]**

## Toroso Investments, LLC and Tidal ETF Trust

November 5, 2018.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) the Funds to issue shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

**APPLICANTS:** Toroso Investments, LLC (''Initial Adviser''), a Delaware limited liability company that will be registered as an investment adviser under the Investment Advisers Act of 1940, and Tidal ETF Trust (''Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series.

**FILING DATES:** The application was filed on June 22, 2018, and amended on October 16, 2018. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, 898 N. Broadway, Suite 2, Massapequa, NY 11758.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the

Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Summary of the Application**

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and (a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the

[1] Applicants request that the order apply to the new series of the Trust described in the application, as well as to additional series of the Trust and any other open-end management investment companies or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24509 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84537; File No. SR–CBOE–2018–071]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of Its Flexible Exchange Options Pilot Program Regarding Permissible Exercise Settlement Values for Flexible Exchange Index Options

November 5, 2018.

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 November 2, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Options proposes to extend the operation of its Flexible Exchange Options (''FLEX Options'') pilot program regarding permissible exercise settlement values for FLEX Index Options.[5]

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 24A.4. Terms of FLEX Options

(a)–(c) (No change).

. . . *Interpretations and Policies:*

.01 FLEX Index Option PM Settlements Pilot Program: Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of [November 5, 2018] *May 6, 2019* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 (No change).

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.[6] The Exchange has extended the pilot period seven times, which is currently set to expire on the earlier of November 5, 2018 or the date on which the pilot program is approved on a permanent basis.[7] The purpose of this rule change filing is to extend the pilot program through the earlier of May 6, 2019 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapter XXIVA. *See* Cboe Options Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), and 29.18. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVA.

[6] Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (''Approval Order''). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. *See* Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026).

[7] *See* Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR–CBOE–2012–027) (extending the pilot through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR–CBOE–2012–102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR–CBOE–2013–099) (extending the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR–CBOE–2014–080) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR–CBOE–2016–032) (extending the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis); 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR–CBOE–2017–032), 83 FR 21808 (May 10, 2018) (extending the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis); and 83175 (May 4, 2018), 83 FR 21808 (May 10, 2018) (SR–CBOE–2018–037). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. *See* Approval Order, *supra* note 6. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. *See id.* and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040).

does not propose any substantive changes to the pilot program.

Under Rule 24A.4, *Terms of FLEX Options,* a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (''a.m. settlement'' or ''p.m. settlement,'' respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.[8] However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expired on, or within two business days of, a third Friday-of-the-month expiration (''Expiration Friday'').[9]

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.[10] The exercise settlement values pilot is currently set to expire on the earlier of November 5, 2018 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of May 6, 2019 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Securities and Exchange Commission (the ''Commission'') pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.[11] The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[12]

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.[13] To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements* and 24A.8, *Exercise Limits.* Additionally, all FLEX Options remain subject to the position reporting requirements in paragraph (a) of Cboe Options Rule 4.13, *Reports Related to Position Limits.*[14] Moreover,

[8] *See* Rule 24A.4(b)(3); *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–017). The Exchange has determined to limit the averaging parameters to three alternatives: The average of the opening and closing index values on the expiration date; the average of intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

[9] For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

[10] No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

[11] The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

[12] 5 U.S.C. 552.

[13] In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter (''OTC'') markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (''NYSE'') at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege (''UTP'') markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (*e.g.,* market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

[14] Cboe Options Rule 4.13(a) provides that ''[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.'' For purposes of Rule 4.13, the term ''customer'' in respect of any Trading Permit Holder includes ''the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or

the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Cboe Options Rule 12.10, *Margin Required is Minimum,* to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. Cboe Options continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. Cboe Options continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the pilot program, which it expects to complete in the fourth quarter of 2018, and will make public any data and analyses it submits to the Commission under the pilot program in the future.

As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Cboe Options 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 Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-Flex expirations and use a p.m. settlement. Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

syndicate account with the Trading Permit Holder or with any partner, officer or director thereof.'' Rule 4.13(d).

[15] For example, a position in a p.m.-settled FLEX Index Option series that expires on Expiration Friday in January 2019 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. *See* Approval Order at footnotes 9 and 10, *supra* note 6.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program prior to its expiration on November 5, 2018, and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[23]

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–CBOE–2018–071 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–CBOE–2018–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–071 and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24524 Filed 11–8–18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84540; File No. SR–BX–2018–049]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter XIV, Index Rules, Section 10(g), Pricing When Primary Market Does Not Open

November 5, 2018.

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 October 30, 2018, Nasdaq BX, Inc. (''BX'' or the ''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 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 XIV, Index Rules, Section 10(g), Pricing When Primary Market Does Not Open.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[24] 17 CFR 200.30–3(a)(12) and (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules at Chapter XIV, Index Rules, Section 10(g) of the Exchange's rulebook regarding determination of the price of component securities for purposes of calculating the current index value at expiration of Exchange index options on days when the primary market for the underlying security does not open.[3] The proposed amendment would apply to both AM-settled and PM-settled index options.[4]

Currently, Chapter XIV, Section 10(g) provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, the price of that security shall be determined, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading.[5]

The Exchange now proposes to delete from the rule the language providing for determination of the price of the component security, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. The Exchange proposes to amend Chapter XIV, Section 10(g) so that it provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used.[6] The revised provision would permit market participants the certainty of knowing the settlement value on the day on which the primary market fails to open. Additionally, the amendment would eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.[7]

The rule would continue to provide that this procedure shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.[8] The Exchange proposes to retain this language in recognition of OCC's authority to establish settlement prices and procedures in certain circumstances where normal settlement procedures cannot be followed due unforeseen events, such as the unanticipated closure of a primary market for a component security on a day on which it would normally be open for trading. The Exchange would thus retain the last sentence of Chapter XIV, Section 10(g) which will make clear that the new procedure would *not* apply in the event that OCC exercises its authority to determine settlement prices. Rather, the proposed new language would apply only when a primary market does not open and OCC elects not to exercise its authority to intervene and take action to establish a settlement price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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. As noted above, the amendment to Chapter XIV, Section 10(g) would establish clearly the procedure for determination of an index component security's price in the event that the primary market for the security fails to open. By adopting the proposed rule amendment, the Exchange would provide certainty to the market regarding the procedure it would follow in the absence of action by OCC. Additionally, it would provide market participants with the certainty of knowing the settlement value on the day on which the primary market fails to open, and eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.

It would also acknowledge clearly, however, that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

[3] Three of the Exchange's affiliated options exchanges, Nasdaq ISE, LLC (''ISE''), The Nasdaq Stock Market LLC (''Nasdaq'') and Nasdaq PHLX LLC, will also be proposing rule changes relating to the manner of determining an underlying index component security's price for purposes of calculating the current index value at expiration of an index option under these circumstances. *See* SR–NASDAQ–2018–081, SR–Phlx–2018–63, and SR–ISE–2018–88. The Exchange desires its rules to be aligned with those of the affiliated exchanges.

[4] Currently, traditional index options expiring on the third Friday of the month are A.M.-settled, meaning that the index option's settlement value is calculated based upon opening prices of the index's component securities on the last day of trading in the component securities prior to expiration, normally on Friday morning. By contrast, the settlement of P.M.-settled index options is based upon the closing index value, defined as the last index value reported on a business day, for the day on which the index option is exercised. P.M.-settled options expiring on the third Friday of the month would therefore normally be settled on the basis of Friday's closing prices of component securities.

[5] The rule provides, however, that this procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the options Clearing Corporation (''OCC'').

[6] Chapter XIV, Section 10(g) would continue to apply to both A.M.-settled and P.M.-settled index options.

[7] The index calculator for the NDX, MNX and BKX indexes, which are products traded on Nasdaq affiliated exchanges, uses the previous day's closing price if components of the index do not open.

[8] *See* OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a ''required value'') for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that OCC may be entitled to take under OCC's bylaws and rules, the, OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

*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 not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by setting forth clearly the manner in which index option settlement values will be determined if the primary market for a security underlying the current index value of an index option does not open for trading, allowing market participants the certainty of knowing the settlement price on the day on which the primary market fails to open, eliminating the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading, and retaining the existing provision stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

*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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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 and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide certainty regarding the determination of settlement prices for index options when the primary market for a security underlying the current index value of an index option does not does not open for trading on an expiration day, including in instances in which OCC exercises its authority to determine the settlement price. According to the Exchange, the proposed rule change will allow investors to know the settlement price of an index option on the day on which the primary market of an underlying component fails to open and will avoid potential difficulties that could arise if the reporting authority for the index was unwilling or unable to calculate the settlement value using prices for the relevant securities on the next day that its primary market is open for trading. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2018–049 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–BX–2018–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–049, and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24527 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84534; File No. SR–CBOE–2018–070]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Renew the Nonstandard Expirations Pilot Program

November 5, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to renew an existing pilot program until May 6, 2019. Under the existing pilot program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (a) Any Monday, Wednesday, or Friday (''Weekly Expirations'') and (b) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').

(additions are italicized; deletions are [bracketed])

* * * * *

**Cboe Exchange, Inc. Rules [sic]**

* * * * *

Rule 24.9. Terms of Index Option Contracts

(a)–(d) (No change).

(e) Nonstandard Expirations Pilot Program

(1)–(2) (No change).

(3) Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through [November 5, 2018] *May 6, 2019.*

(4) (No change).

. . . *Interpretations and Policies:*

.01–.14 (No change).

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On September 14, 2010, the Commission approved a Cboe Options proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.[5] On January 14, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Wednesday of month, other than those that coincide with an EOM.[6] On August 10, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Monday of month, other than those that coincide with an EOM.[7] Under the terms of the Nonstandard Expirations Pilot Program (''Program''), Weekly Expirations and EOMs are permitted on any broad-based index that is eligible for regular options trading. Weekly Expirations and EOMs are cash-settled and have European-style exercise. The proposal became effective on a pilot basis for a period of fourteen months that commenced on the next full month after approval was received to establish the Program [8] and was subsequently extended.[9] The Program is scheduled to expire on November 5, 2018. The Exchange believes that the Program has been successful and well received by its Trading Permit Holders and the investing public during that the time that it has been in operation. The Exchange hereby proposes to extend the Program until May 6, 2019. This proposal does not request any other changes to the Program.

Pursuant to the order approving the establishment of the Program, two months prior to the conclusion of the pilot period, Cboe Options is required to submit an annual report to the Commission, which addresses the following areas: Analysis of Volume & Open Interest, Monthly Analysis of Weekly Expirations & EOM Trading Patterns and Provisional Analysis of Index Price Volatility. The Exchange has submitted, under separate cover, the annual report in connection with the present proposed rule change. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Program, which it expects to complete in the fourth quarter of 2018, and will make public any data and analyses it submits to the Commission under the Program in the future.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075).

[6] *See* Securities Exchange Act Release 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR–CBOE–2015–106).

[7] *See* Securities Exchange Act Release 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR–CBOE–2016–046).

[8] *Id.*

[9] *See* Securities Exchange Act Release 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011) (immediately effective rule change extending the Program through February 14, 2013). *See also* Securities Exchange Act Release 68933 (February 14, 2013), 78 FR 12374 (February 22, 2013) (immediately effective rule change extending the Program through April 14, 2014); 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (immediately effective rule change extending the Program through November 3, 2014); 73422 (October 24, 2014), 79 FR 64640 (October 30, 2014) (immediately effective rule change extending the Program through May 3, 2016); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (extending the Program through May 3, 2017); 80387 (April 6, 2017), 82 FR 17706 (April 12, 2017) (extending the Program through May 3, 2018); and 83165 (May 3, 2018), 83 FR 21316 (May 9, 2018) (SR–CBOE–2018–038) (extending the Program through November 8, 2018).

If, in the future, the Exchange proposes an additional extension of the Program, or should the Exchange propose to make the Program permanent (which the Exchange currently intends to do), the Exchange will submit an annual report (addressing the same areas referenced above and consistent with the order approving the establishment of the Program) to the Commission at least two months prior to the expiration date of the Program. Any positions established under the Program will not be impacted by the expiration of the Program.

The Exchange believes there is sufficient investor interest and demand in the Program to warrant its extension. The Exchange believes that the Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the Program has been successful to date and states that it has not encountered any problems with the Program. The proposed rule change allows for an extension of the Program for the benefit of market participants. Additionally, the Exchange believes that there is demand for the expirations offered under the Program and believes that that Weekly Expirations and EOMs will continue to provide the investing public and other market participants increased opportunities to better manage their risk exposure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Cboe Options 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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program prior to its expiration on November 5, 2018, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

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–CBOE–2018–070 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–CBOE–2018–070. This file number should be included on the

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–070, and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24522 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 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 204, SEC File No. 270–586, OMB Control No. 3235–0647

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 204 (17 CFR 242.204), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission's goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive ''naked'' short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (''SRO'') examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a ''collection of information'' within the meaning of the Paperwork Reduction Act.

I. Allocation Notification Requirement: As of December 31, 2017, there were 3,893 registered broker-dealers. Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether or not such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). We estimate that a broker or dealer could have to make such determination and notification with respect to approximately 1.76 equity securities per day.[1] We estimate a total of 1,719,772 potential notifications in accordance with Rule 204(d) across all registered broker-dealers (that could be allocated responsibility to close out a fail to deliver position) per year (3,893 registered broker-dealers notifying participants once per day [2] on 1.76 equity securities, multiplied by 251 trading days in 2017). The total estimated annual burden hours per year will be approximately 275,164 burden hours (1,719,772 multiplied by 0.16 hours/notification).

II. Demonstration Requirement for Fails to Deliver on Long Sales: As of December 5, 2017, there were 132 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 33 securities per day.[3]

[1] The Commission's Division of Economic and Risk Analysis (''DERA'') estimates that there were approximately 6,868 average daily fail to deliver positions during 2017. Across 3,893 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 1.76 equity securities.

[2] Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, we believe that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

[3] DERA estimates that during 2017 approximately 62.93% of trade volume was long. DERA estimates that there were approximately 6,868 average daily fail to deliver positions during 2017. Across 132 broker-dealer participants of the NSCC, the number

Continued

We estimate a total of 1,093,356 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (132 participants checking for compliance once per day on 33 securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hour per year will be approximately 174,937 burden hours (1,093,356 multiplied by 0.16 hours/documentation).

III. Pre-Borrow Notification Requirement: As of December 5, 2017, there were 132 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether or not the fail to deliver position was closed out in accordance with Rule 204(a). We estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 52 equity securities per day.[4] We estimate a total of 1,722,864 potential notifications in accordance with Rule 204(c) across all participants per year (132 broker-dealer participants notifying broker-dealers once per day on 52 securities, multiplied by 251 trading days in 2017). The total estimated annual burden hours per year will be approximately 275,658 burden hours (1,722,864 multiplied by 0.16 hours/documentation).

IV. Certification Requirement: As of December 31, 2017, there were 3,893 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), we estimate that a broker-dealer could have to make such determination with respect to approximately 1.76 securities per day.[5] We estimate that registered broker-dealers could have to certify to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that it is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 1,719,772 times per year (3,893 registered broker-dealers certifying once per day on 1.76 securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hour per year will be approximately 275,164 burden hours (1,719,772 multiplied by 0.16 hours/certification).

V. Pre-Fail Credit Demonstration Requirement: As of December 31, 2017, there were 3,893 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, we estimate that a broker-dealer could have to make such determination with respect to approximately 1.76 securities per day.[6] We estimate that registered broker-dealers could have to demonstrate on its books and records that it has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, 1,719,772 times per year (3,893 registered broker-dealers checking for compliance once per day on 1.76 equity securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hours per year will be 275,164 burden hours (1,719,772 multiplied by 0.16 hours/demonstration).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,276,087 hours per year (275,164 + 174,937 + 275,658 + 275,164 + 275,164). 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 review background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 6, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24577 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

of securities per participant per day is approximately 52 equity securities. 62.93% of 52 equity securities per trading day equals approximately 33 securities per day.

[4] *See supra* note 3.

[5] *See supra* note 1.

[6] *See supra* note 1.

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 also imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''); establish written procedures to test periodically the ability of the fund to maintain a stable NAV based on certain hypothetical events (''stress testing''); review, revise, and approve written procedures to stress test a fund's portfolio; and create a report to the fund board documenting the results of stress testing. The board must also adopt guidelines and procedures relating to certain responsibilities it delegates to

the fund's investment adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes, including determinations to impose any liquidity fees or temporary suspension of redemptions. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, evaluations with respect to asset-backed securities not subject to guarantees, and determinations with respect to adjustable rate securities and asset-backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–CR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–CR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

A fund must also post certain periodic information on the its website including disclosure of portfolio holdings, disclosure of daily and weekly liquid assets and net shareholder flow, disclosure of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions. Lastly, for funds that elect to be retail funds, they must create written policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds and reduce the likelihood that a fund is unable to maintain a stable NAV.

Commission staff estimates that there are 433 money market funds (91 fund complexes), all of which are subject to rule 2a–7. Commission staff further estimates that there will be approximately 10 new money market funds established each year. Commission staff estimates that rule 2a–7 contains the following collection of information requirements:

- Record of credit risk analyses, and determinations regarding adjustable rate securities, asset-backed securities, asset-backed securities not subject to guarantees, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements. Commission staff estimates a total annual hour burden for 433 funds to be 294,440 hours.
- Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority. Commission staff estimates a total annual hour burden for 10 new money market funds to be 155 hours.
- Board review of procedures and guidelines of any investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a–7 and amendment of such procedures and guidelines. Commission staff estimates a total annual hour burden for 108 funds to be 540 hours.
- Records of the board's determination for imposing any liquidity fees or temporary suspension of redemptions. Commission staff estimates a total annual hour burden for 2 funds to be 14 hours.
- Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events (''stress testing''). Commission staff estimates a total annual hour burden for 10 new money market funds to be 220 hours.
- Review, revise, and approve written procedures to stress test a fund's portfolio. Commission staff estimates a total annual hour burden for 91 fund complexes to be 1,092 hours.
- Reports to fund boards on the results of stress testing. Commission staff estimates a total annual hour burden for 91 fund complexes to be 4,550 hours.
- website disclosures of portfolio holdings, of daily and weekly liquid assets and net shareholder flow, of daily current NAV, and disclosures of financial support received by the fund, the imposition and removal of liquidity fees and the suspension and resumption of fund redemptions. Commission staff estimates a total annual hour burden for 433 funds to be 36,291 hours.
- For funds electing retail fund status, written policies and procedures limiting all beneficial owners of the fund to natural persons. Commission staff estimates a total annual hour burden for 2 funds to be 26 hours.

Thus, the Commission estimates the total annual burden of the rule's information collection requirements is 337,328 hours.[1]

The estimated total annual burden is being decreased from 632,725 hours to 337,328 hours. This net decrease of 295,397 hours [2] is attributable to a combination of factors, including a decrease in the number of money market funds and fund complexes, and updated information from money market funds regarding hourly burdens, including revised staff estimates of the burden hours required to comply with rule 2a–7 as a result of new information received from surveyed fund representatives.

Commission staff estimates that in addition to the burden hours described above, money market funds will incur costs to preserve records, as required under rule 2a–7.[3] These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[4] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on a cost of $0.0051295 per dollar of assets under management for small funds, $0.0005041 per dollar assets under management for medium funds, and

[1] This estimate is based on the following calculation: 294,440 hours + 155 hours + 540 hours + 14 hours + 220 hours + 1,092 hours + 4,550 hours + 36,291 hours + 26 hours = 337,328 hours.

[2] This estimate is based on the following calculation: 632,725 hours − 337,328 hours = 295,397 hours.

[3] A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality (*e.g.* handwritten notes, computer disks, etc.). Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N–CR are included in the PRA burden estimate for that form.

[4] The vast majority of assets under management in individual money market funds range from approximately $50 million to approximately $144.7 billion. We further note that the assets under management figures were calculated based on net assets at the fund level and not the sum of the market values of the underlying funds.

$0.0000009 per dollar of assets under management for large funds, the staff estimates compliance with the record storage requirements of rule 2a–7 costs the fund industry approximately $35.31 million per year.[5]

Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000132 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from $0 for small funds to $40.9 million for all large funds.[6] Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($20.45 million)[7] and for record preservation ($17.65 million)[8] to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

As a result, the estimated total annual cost is being decreased from $92.9 million to $38.11 million.[9] This net decrease of $54.79 million[10] is attributable to a reduction in the number of money market mutual funds, updated information from money market funds regarding assets under management, as well as deducting the $38.1 million[11] in capital and preservation costs a money market fund would incur absent the requirements of rule 2a–7.

These estimates of burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 6, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24575 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[5] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $403.6 million under management in small funds, $60.4 billion under management in medium funds and $3.1 trillion under management in large funds, the costs of preservation were estimated as follows: ((0.0051295 × $403.6 million) + (0.0005041 × $60.4 billion) + (0.0000009 × $3.1 trillion) = $35.31 million. For purposes of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small—money market funds with $50 million or less in assets under management; (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[6] This estimate is based on the following calculation: $0.0000132 × $3.1 trillion in assets under management for large funds = $40.9 million.

[7] This estimate is based on the following calculation: $40.9 million in capital costs/2 = $20.45 million.

[8] This estimate is based on the following calculation: $35.31 million in record preservation costs/2 = $17.65 million

[9] This estimate is based on the following calculation: $35.31 million in record preservation costs + $40.9 million in capital costs − $17.65 million in record preservation costs absent rule 2a–7 requirements − $20.45 million in capital costs absent rule 2a–7 requirements = $38.11 million.

[10] This estimate is based on the following calculation: $92.9 million − $38.11 million = $54.79 million.

[11] This estimate is based on the following calculation if rule 2a–7 compliance was not required for a money market fund: $20.45 million in capital costs + $17.65 million in record preservation = $38.1 million.

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission staff will hold a public roundtable on Thursday, November 15, 2018 at 9:30 a.m.

**PLACE:** The roundtable will be held in the Auditorium at the Commission's headquarters, 100 F Street NE, Washington, DC.

**STATUS:** The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:** The Commission staff will host a roundtable on the proxy process. The roundtable is open to the public and the public is invited to submit written comments. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable.

The agenda for the roundtable will focus on key aspects of the U.S. proxy system, including proxy voting mechanics and technology, the shareholder proposal process, and the role and regulation of proxy advisory firms.

**CONTACT PERSON FOR MORE INFORMATION:** For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 6, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–24632 Filed 11–7–18; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84539; File No. SR–ISE–2018–88]**

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2008(g), Pricing When Primary Market Does Not Open

November 5, 2018.

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 October 23, 2018, Nasdaq ISE, LLC (''ISE'' or the ''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 the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 ISE Rule 2008, Trading Sessions, Section (g), Pricing When Primary Market Does Not Open.

The text of the proposed rule change is available on the Exchange's website at *http://ise.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 Exchange proposes to amend Exchange Rule 2008(g) regarding determination of the price of component securities for purposes of calculating the current index value at expiration of Exchange listed index options on days when the primary market for the underlying security does not open.[3] The proposed amendment would apply to both AM-settled and PM-settled index options.[4]

Currently, Rule 2008(g) provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, the price of that security shall be determined, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading.[5]

The Exchange now proposes to delete from the rule the language providing for determination of the price of the component security, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. The Exchange proposes to amend Rule 2008(g) so that it provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used.[6] The revised provision would permit market participants the certainty of knowing the settlement value on the day on which the primary market fails to open. Additionally, the amendment would eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.[7]

The rule would continue to provide that this procedure shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.[8] The Exchange proposes to retain this language in recognition of OCC's authority to establish settlement prices and procedures in certain circumstances where normal settlement procedures cannot be followed due unforeseen events, such as the unanticipated closure of a primary market for a component security on a day on which it would normally be open for trading. The Exchange would thus retain the last sentence of Rule 2008(g) which will make clear that the new procedure would *not* apply in the event that OCC exercises its authority to determine settlement prices. Rather, the proposed new language would apply only when a primary market does not open and OCC elects not to exercise its authority to intervene and take action to establish a settlement price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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. As noted above, the amendment to Rule 2008(g) would establish clearly the procedure for determination of an index component security's price in the event that the primary market for the security fails to open. By adopting the proposed rule amendment, the Exchange would provide certainty to the market regarding the procedure it would follow in the absence of action by OCC. Additionally, it would provide market participants with the certainty of knowing the settlement value on the day on which the primary market fails to open, and eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the

[3] Three of the Exchange's affiliated options exchanges, Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq'') and Nasdaq PHLX LLC (''Phlx''), will also be proposing rule changes relating to the manner of determining an underlying index component security's price for purposes of calculating the current index value at expiration of an index option under these circumstances. *See* SR–NASDAQ–2018–081, SR–Phlx–2018–63, and SR–BX–2018–049. The Exchange desires its rules to be aligned with those of the affiliated exchanges.

[4] Currently, traditional index options expiring on the third Friday of the month are A.M.-settled, meaning that the index option's settlement value is calculated based upon opening prices of the index's component securities on the last day of trading in the component securities prior to expiration, normally on Friday morning. By contrast, the settlement of P.M.-settled index options is based upon the closing index value, defined as the last index value reported on a business day, for the day on which the index option is exercised. P.M.-settled options expiring on the third Friday of the month would therefore normally be settled on the basis of Friday's closing prices of component securities.

[5] Rule 2008(g) provides however that this procedure is not to be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Options Clearing Corporation (''OCC'').

[6] Rule 2008(g) would continue to apply to both A.M.-settled and P.M.-settled index options.

[7] The index calculator for the NDX, MNX and BKX indexes, which are products traded on Nasdaq affiliated exchanges, uses the previous day's closing price if components of the index do not open.

[8] *See* OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time whenthe [sic] current index value for that trading day would ordinarily be determined, orthat [sic] a current index value or other value or price to be used as, or to determine,the [sic] exercise settlement amount (a ''required value'') for a trading day is otherwiseunreported [sic], inaccurate, unreliable, unavailable or inappropriate for purposes ofcalculating [sic] the exercise settlement amount, then, in addition to any other actionsthat [sic] OCC may be entitled to take under OCC's bylaws and rules, the, OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.

It would also acknowledge clearly, however, that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

*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 not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by setting forth clearly the manner in which index option settlement values will be determined if the primary market for a security underlying the current index value of an index option does not open for trading, allowing market participants the certainty of knowing the settlement price on the day on which the primary market fails to open, eliminating the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading, and retaining the existing provision stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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 and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide certainty regarding the determination of settlement prices for index options when the primary market for a security underlying the current index value of an index option does not does not open for trading on an expiration day, including in instances in which OCC exercises its authority to determine the settlement price. According to the Exchange, the proposed rule change will allow investors to know the settlement price of an index option on the day on which the primary market of an underlying component fails to open and will avoid potential difficulties that could arise if the reporting authority for the index was unwilling or unable to calculate the settlement value using prices for the relevant securities on the next day that its primary market is open for trading. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–88 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–ISE–2018–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–88, and should

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24526 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84538; File No. SR–NASDAQ–2018–081]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter XIV, Index Rules, Section 10(g), Pricing When Primary Market Does Not Open

November 5, 2018.

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 October 23, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''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 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 XIV, Index Rules, Section 10(g), Pricing When Primary Market Does Not Open.

The text of the proposed rule change is available on the Exchange's website at *http://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 Exchange proposes to amend its rules at Chapter XIV, Index Rules, Section 10(g) of the Exchange's rulebook regarding determination of the price of component securities for purposes of calculating the current index value at expiration of Exchange index options on days when the primary market for the underlying security does not open.[3] The proposed amendment would apply to both AM-settled and PM-settled index options.[4]

Currently, Chapter XIV, Section 10(g) provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, the price of that security shall be determined, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading.[5]

The Exchange now proposes to delete from the rule the language providing for determination of the price of the component security, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. The Exchange proposes to amend Chapter XIV, Section 10(g) so that it provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used.[6] The revised provision would permit market participants the certainty of knowing the settlement value on the day on which the primary market fails to open. Additionally, the amendment would eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.[7]

The rule would continue to provide that this procedure shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.[8] The Exchange proposes to retain this language in recognition of OCC's authority to establish settlement prices and procedures in certain circumstances where normal settlement procedures cannot be followed due unforeseen events, such as the unanticipated closure of a primary market for a component security on a day on which it would normally be open for trading. The Exchange would thus retain the last sentence of Chapter XIV, Section 10(g) which will make clear that the new

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Three of the Exchange's affiliated options exchanges, Nasdaq ISE, LLC (''ISE''), Nasdaq BX (''BX'') and Nasdaq PHLX LLC, will also be proposing rule changes relating to the manner of determining an underlying index component security's price for purposes of calculating the current index value at expiration of an index option under these circumstances. *See* SR–BX–2018–049, SR–Phlx–2018–63, and SR–ISE–2018–88. The Exchange desires its rules to be aligned with those of the affiliated exchanges.

[4] Currently, traditional index options expiring on the third Friday of the month are A.M.-settled, meaning that the index option's settlement value is calculated based upon opening prices of the index's component securities on the last day of trading in the component securities prior to expiration, normally on Friday morning. By contrast, the settlement of P.M.-settled index options is based upon the closing index value, defined as the last index value reported on a business day, for the day on which the index option is exercised. P.M.-settled options expiring on the third Friday of the month would therefore normally be settled on the basis of Friday's closing prices of component securities.

[5] The rule provides, however, that this procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the options Clearing Corporation (''OCC'').

[6] Chapter XIV, Section 10(g) would continue to apply to both A.M.-settled and P.M.-settled index options.

[7] The index calculator for the NDX, MNX and BKX indexes, which are products traded on Nasdaq affiliated exchanges, uses the previous day's closing price if components of the index do not open.

[8] *See* OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the current index value for that trading day would ordinarily be determined, or that a current index value or other value or price to be used as, or to determine, the exercise settlement amount (a ''required value'') for a trading day is otherwise unreported, inaccurate, unreliable, unavailable or inappropriate for purposes of calculating the exercise settlement amount, then, in addition to any other actions that OCC may be entitled to take under OCC's bylaws and rules, the, OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount.

procedure would *not* apply in the event that OCC exercises its authority to determine settlement prices. Rather, the proposed new language would apply only when a primary market does not open and OCC elects not to exercise its authority to intervene and take action to establish a settlement price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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. As noted above, the amendment to Chapter XIV, Section 10(g) would establish clearly the procedure for determination of an index component security's price in the event that the primary market for the security fails to open. By adopting the proposed rule amendment, the Exchange would provide certainty to the market regarding the procedure it would follow in the absence of action by OCC. Additionally, it would provide market participants with the certainty of knowing the settlement value on the day on which the primary market fails to open, and eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.

It would also acknowledge clearly, however, that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

*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 not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by setting forth clearly the manner in which index option settlement values will be determined if the primary market for a security underlying the current index value of an index option does not open for trading, allowing market participants the certainty of knowing the settlement price on the day on which the primary market fails to open, eliminating the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading, and retaining the existing provision stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

*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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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 and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide certainty regarding the determination of settlement prices for index options when the primary market for a security underlying the current index value of an index option does not does not open for trading on an expiration day, including in instances in which OCC exercises its authority to determine the settlement price. According to the Exchange, the proposed rule change will allow investors to know the settlement price of an index option on the day on which the primary market of an underlying component fails to open and will avoid potential difficulties that could arise if the reporting authority for the index was unwilling or unable to calculate the settlement value using prices for the relevant securities on the next day that its primary market is open for trading. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–081 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–081. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–081, and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24525 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84535; File No. SR–CBOE–2018–069]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of its SPXPM Pilot Program

November 5, 2018.

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 November 2, 2018, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its SPXPM pilot program.

The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

**Cboe Exchange, Inc. Rules [sic]**

* * * * *

Rule 24.9. Terms of Index Option Contracts

(No change).

. . . Interpretations and Policies:

.01–.13 (No change).

.14 In addition to A.M.-settled Standard & Poor's 500 Stock Index options approved for trading on the Exchange pursuant to Rule 24.9, the Exchange may also list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series). The Exchange may also list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). P.M.-settled third Friday-of-the-month SPX options series and P.M.-settled XSP options will be listed for trading for a pilot period ending [November 5, 2018] *May 6, 2019*.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On February 8, 2013, the Exchange received approval of a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'').[5] On July 31, 2013, the Exchange received approval of a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled'')[6] (together, SPXPM and P.M.-settled XSP to be referred to herein as the ''Pilot Products'').[7] The Exchange has extended the pilot period five times, which is currently set to expire on the earlier of November 5, 2018 or the date on which the pilot program is approved on a permanent basis.[8] The Exchange

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[6] *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (the ''P.M.-settled XSP Approval Order'').

[7] For more information on the Pilot Products or the Pilot Program, *see* the SPXPM Approval Order and the P.M.-settled XSP Approval Order.

[8] *See* Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014)

Continued

hereby proposes to further extend the end date of the pilot period to May 6, 2019.

During the course of the Pilot Program and in support of the extensions of the Pilot Program, the Exchange submits to the Securities and Exchange Commission (the ''Commission'') reports regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order and the P.M.-settled XSP Approval Order. Specifically, the Exchange submits annual Pilot Program reports to the Commission that contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange also submits periodic interim reports that contain some, but not all, of the information contained in the annual reports. In providing the annual and periodic interim reports (the ''pilot reports'') to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[9]

The pilot reports both contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, S&P 500 index options traded on Cboe Options, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

(1) A time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order and the P.M.-settled XSP Approval Order.[10] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, which it expects to complete in the fourth quarter of 2018, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to consider the impact of the Pilot Program. To this point, Cboe Options believes that the Pilot Program has been well-received by its Trading Permit Holders and the investing public, and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP options. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order and the P.M.-settled XSP Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to May 6, 2019.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and

(SR–CBOE–2014–004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR–CBOE–2014–076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR–CBOE–2016–036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR–CBOE–2017–025); and 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR–CBOE–2018–036).

[9] 5 U.S.C. 552.

[10] Pursuant to Securities Exchange Act Release No. 75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR–CBOE–2015–079), the Exchange added SPXPM and P.M.-settled XSP options to the list of products approved for trading during Extended Trading Hours (''ETH''). The Exchange will also include the applicable information regarding SPXPM and P.M.-settled XSP options that trade during ETH in its annual and interim reports.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

P.M.-settled XSP, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Cboe Options 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 Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all Cboe Options market participants, and the Pilot Products will be available to all Cboe Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on Cboe Options. To the extent that the continued trading of the Pilot Products may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Program prior to its expiration on November 5, 2018, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Pilot Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[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.

**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–CBOE–2018–069 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–CBOE–2018–069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–069, and should be submitted on or before November 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–24528 Filed 11–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15688 and #15689; MINNESOTA Disaster Number MN–00063]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of MINNESOTA

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of MINNESOTA (FEMA–4390–DR), dated 09/05/2018.

*Incident:* Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

*Incident Period:* 06/15/2018 through 07/12/2018.

**DATES:** Issued on 11/02/2018.

*Physical Loan Application Deadline Date:* 11/05/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/05/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MINNESOTA, dated 09/05/2018, is hereby amended to re-establish the incident period for this disaster as beginning 06/15/2018 and continuing through 07/12/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–24558 Filed 11–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15794 and #15795; ALABAMA Disaster Number AL–00090]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–4406–DR), dated 11/05/2018.

*Incident:* Hurricane Michael.

*Incident Period:* 10/10/2018 through 10/13/2018.

**DATES:** Issued on 11/05/2018.

*Physical Loan Application Deadline Date:* 01/04/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/05/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 11/05/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Geneva, Henry, Houston, Mobile.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 2.500 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.500 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.500 |

The number assigned to this disaster for physical damage is 157948 and for economic injury is 157950.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–24564 Filed 11–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15688 and #15689; MINNESOTA Disaster Number MN–00063]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Minnesota

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–4390–DR), dated 09/05/2018.

*Incident:* Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

*Incident Period:* 06/15/2018 through 07/12/2018.

**DATES:** Issued on 11/02/2018.

*Physical Loan Application Deadline Date:* 11/05/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/05/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MINNESOTA, dated 09/05/2018, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Kanabec

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–24569 Filed 11–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15788 and #15789; GEORGIA Disaster Number GA–00109]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Georgia

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4400–DR), dated 11/01/2018.

*Incident:* Hurricane Michael.

*Incident Period:* 10/09/2018 through 10/23/2018.

**DATES:** Issued on 11/02/2018.

*Physical Loan Application Deadline Date:* 12/31/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/02/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance,

U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of GEORGIA, dated 11/01/2018, is hereby amended to establish the incident period for this disaster as beginning 10/09/2018 and continuing through 10/23/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–24565 Filed 11–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15744 and #15745; GEORGIA Disaster Number GA–00108]**

### Presidential Declaration Amendment of a Major Disaster for the State of Georgia

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4400–DR), dated 10/14/2018.

*Incident:* Hurricane Michael.

*Incident Period:* 10/09/2018 through 10/23/2018.

**DATES:** Issued on 11/02/2018.

*Physical Loan Application Deadline Date:* 12/13/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/15/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of GEORGIA, dated 10/14/2018, is hereby amended to establish the incident period for this disaster as beginning 10/09/2018 and continuing through 10/23/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–24568 Filed 11–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2018–0058]**

### Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2018–0058].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 8, 2019. Individuals can obtain copies of the collection instruments by writing to the above email address.

*1. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330, 404.339–404.341 and 404.348–404.349—0960–0019.* SSA uses Form SSA–781 to determine if non-custodial parents who file for spouse, mother's, father's, or surviving divorced mother's or father's benefits based on having a child in their care, meet the in-care requirements. The in-care provision requires claimants to have an entitled child under age 16 or disabled in their care. The respondents are applicants for spouse; mother's, father's, or surviving divorced mother's or father's Social Security benefits.

*Type of Request:* Request for a new information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–781 | 14,000 | 1 | 10 | 2,333 |

*2. Farm Self-Employment Questionnaire—20 CFR 404.1082(c) & 404.1095—0960–0061.* SSA collects the information on Form SSA–7156 on a voluntary and as-needed basis to determine the existence of an agriculture trade or business which may affect the monthly benefit, or insured status, of the applicant. SSA requires the existence of a trade or business before determining if an individual or partnership has net earnings from self-employment. When an applicant indicates self-employment as a farmer, SSA uses the SSA–7165 to obtain the information we need to determine the existence of an agricultural trade or business, and subsequent covered earnings for Social Security entitlement purposes. As part of the application process, we conduct a personal interview, either face-to-face or via telephone, and document the interview using Form SSA–7165. We also allow applicants to complete a fillable version of the form available on our website, which they can complete, print, and sign. The respondents are applicants for Social Security benefits whose entitlement depends on whether the

worker received covered earnings from self-employment as a farmer.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–7156 | 47,500 | 1 | 10 | 7,917 |

*3. Child Relationship Statement—20 CFR 404.355 & 404.731—0960–0116.* To help determine a child's entitlement to Social Security benefits, SSA uses criteria under section 216(h)(3) of the Social Security Act (Act), deemed child provision. SSA may deem a child to an insured individual if: (1) The insured individual presents SSA with satisfactory evidence of parenthood, and was living with or contributing to the child's support at certain specified times; or (2) the insured individual (a) acknowledged the child in writing; (b) was court decreed as the child's parent; or (c) was court ordered to support the child. To obtain this information, SSA uses Form SSA–2519, Child Relationship Statement. The respondents are people with knowledge of the relationship between certain individuals filing for Social Security benefits and their alleged biological children.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–2519 | 50,000 | 1 | 15 | 12,500 |

*4. Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120.* SSA may grant gratuitous military wage credits for active military or naval service (under certain conditions) during the period of September 16, 1940 through December 31, 1956, if no other Federal agency (other than the Veterans Administration) credited the service for benefit eligibility or computation purposes. We use Form SSA–2512 to collect specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner claims pre-1957 military service.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–2512 | 5,000 | 1 | 10 | 833 |

*5. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—20 CFR 416.200, 416.203, 404.508, & 416.553—0960–0293.* SSA collects and verifies financial information from individuals applying for Title II and Title XVI waiver determinations, as well as those who apply for, or currently receive (in the case of redetermination), Supplemental Security Income (SSI) payments. We require the financial information from these applicants to: (1) Determine the eligibility of the applicant or recipient for SSI benefits; or (2) determine if a request to waive a Social Security overpayment defeats the purpose of the Act. If the Title II and Title XVI waiver applicants, or the SSI claimants provide incomplete, unavailable, or seemingly altered records, SSA contacts their financial institutions to verify the existence, ownership, and value of accounts owned. Financial institutions need individuals to sign Form SSA–4641–F4, or work with SSA staff to complete one of SSA's electronic applications, e4641 or the Access to Financial Institutions (AFI) screens, to authorize the individual's financial institution to disclose records to SSA. The respondents are Title II and Title XVI recipients applying for waivers, or SSI applicants, recipients, and their deemors to determine SSI eligibility.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–4641 (paper) | 140,000 | 1 | 6 | 14,000 |
| e4641 and AFI (Internet) | 15,860,000 | 1 | 2 | 528,667 |
| Totals | 16,000,000 | | | 542,667 |

*6. Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(b)&(c), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(b)&(c), 416.2221(a)—0960–0310.* State vocational rehabilitation (VR) agencies submit Form SSA–199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing causality statements. The respondents provide the information requested through a web-based Secure Ticket Portal, in lieu of submitting forms. This Portal allows VRs to retrieve reports, and enter and submit information electronically, minimizing the use of the paper form to SSA for consideration and approval of the claim for reimbursement of costs incurred for SSA beneficiaries. SSA uses the information on the SSA–199, along with the written documentation, to determine whether, and how much, to pay State VR agencies under SSA's VR program. Respondents are State VR agencies offering vocational and employment services to Social Security and SSI recipients.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Number of responses | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|---|
| SSA–199 CFR 404.2108 & 416.2208 | 80 | 160 | 12,800 | 23 | 4,907 |
| CFR 404.2117 & 416.2217 Written requests | 80 | 1 | 80 | 60 | 80 |
| CFR 404.2121 & 416.2221 Written requests | 80 | 2.5 | 200 | 100 | 333 |
| Total | 80 | | 13,080 | | 5,320 |

*7. Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348.* At the request of the claimants or their representatives, SSA schedules evidentiary hearings at the reconsideration level for claimants of Title II benefits or Title XVI payments when we deny their claims for disability. When claimants or their representatives find they are unable to attend the scheduled hearing, they complete Form SSA–769 to request a change in time or place of the hearing. SSA uses the information as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants or their representatives who wish to request a change in the time or place of their hearing.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–769 | 7,483 | 1 | 8 | 998 |

*8. Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444.* SSA uses Form SSA–8001–BK to determine an applicant's eligibility for SSI and SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the information for two purposes: (1) To formally deny SSI for nonmedical reasons when information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for SSI payments.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSI Claims System | 802,368 | 1 | 20 | 267,456 |
| iClaim/SSI Claims System | 168,661 | 1 | 20 | 56,220 |
| SSA–8001–BK (Paper Version) | 2,588 | 1 | 20 | 863 |
| Totals | 973,617 | | | 324,539 |

*9. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547.* Pension plan administrators annually file plan information with the Internal Revenue Service, which then forwards the information to SSA. SSA maintains and organizes this information by plan number; plan participant's name; and Social Security number. Section 1131(a) of the Act entitles pension plan participants to request this information from SSA. The Wage Reports and Pension Information regulation, 20 CFR 422.122(b) of the Code of Federal Regulations, requires requestors submit a written request with identifying information to SSA, before SSA disseminates this information. The respondents are requestors of pension plan information.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| Requests for pension plan information | 580 | 1 | 30 | 290 |

*10. International Direct Deposit—31 CFR 210—0960–0686.* SSA's International Direct Deposit (IDD) Program allows beneficiaries living abroad to receive their payments via direct deposit to an account at a financial institution outside the United States. SSA uses Form SSA–1199–(Country) to enroll Title II beneficiaries residing abroad in IDD, and to obtain the direct deposit information for foreign accounts. Routing account number information varies slightly for each foreign country, so we use a variation of the Treasury Department's Form SF–1199A for each country. The respondents are Social Security beneficiaries residing abroad who want SSA to deposit their Title II benefit payments directly to a foreign financial institution.

*Type of Request:* Revision of an OMB approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–1199–(Country) | 13,750 | 1 | 5 | 1,146 |

*11. Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740.* This information collection request comprises several regulation sections that provide additional safeguards for Social Security beneficiaries' whose representative payees receive their payment. SSA requires representative payees to notify them of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due and if the payee is suitable to continue servicing as payee. The respondents are representative payees who receive and use benefits on behalf of Social Security beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden of response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 404.2035(d)—Paper/Mail | 29,601 | 1 | 5 | 2,467 |
| 404.2035(d)—Office interview/Intranet | 562,419 | 1 | 5 | 46,868 |
| 404.2035(f)—Paper/Mail | 296 | 1 | 5 | 25 |
| 404.2035(f)—Office interview/Intranet | 5,624 | 1 | 5 | 469 |
| 416.635(d)—Paper/Mail | 16,146 | 1 | 5 | 1,346 |
| 416.635(d)—Office interview/Intranet | 296,424 | 1 | 5 | 24,702 |
| 416.635(f)—Paper/Mail | 162 | 1 | 5 | 14 |
| 416.635(f)—Office interview/Intranet | 3,067 | 1 | 5 | 256 |
| Totals | 913,739 | ..... | ..... | 76,147 |

Dated: November 5, 2018.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2018–24517 Filed 11–8–18; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project on State Route 133 from just south of El Toro Road to State Route 73 between Post Miles 3.1 and R4.1 in the City of Laguna Beach, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 8, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Smita Deshpande, Senior Environmental Planner, Caltrans, 1750 East 4th Street, Suite 100, Santa Ana, California, 92705, (657) 328–6151, *smita.deshpande@dot.ca.gov.* For FHWA: Larry Vinzant at (916) 498–5040 or email *larry.vinzant@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given

that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project proposes to make improvements to State Route (SR) 133 in both directions from just south of El Toro Road to SR–73 between Post Miles 3.1 and R4.1 in Laguna Beach. The project will make drainage improvements, widen the shoulders, add a Class II bike lane, and underground overhead utilities. The project also includes safety improvements from 1,700 feet (ft) south of El Toro Road to 1,200 ft north of El Toro Road. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on October 1, 2018. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project website at: *http://www.dot.ca.gov/d12/DEA/133/0P94U* (web address is case-sensitive, use capital letters as indicated).

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351)
2. Clean Air Act (42 U.S.C. 7401–7671(q))
3. Migratory Bird Treaty Act (16 U.S.C. 703–712)
4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470(f) *et seq.*)
5. Clean Water Act (Section 401) (33 U.S.C. 1251–1377)
6. Federal Endangered Species Act of 1973 (16 U.S.C. 1531–1543)
7. Executive Order 11990—Protection of Wetlands
8. Department of Transportation Act of 1966, Section 4(f) (49 U.S.C. 303)
9. Executive Order 13112—Invasive Species
10. Historic Sites Act of 1935;
11. Executive Order 13112, Invasive Species; and
12. Title VI of the Civil Rights Act of 1964

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

**Tashia J. Clemons,**

*Director, Planning and Environment, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2018–24543 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0017]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 12 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** The exemptions were applicable on October 11, 2018. The exemptions expire on October 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

*A. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0017, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility 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, Monday through Friday, except Federal holidays.

*B. Privacy Act*

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

#### II. Background

On September 10, 2018, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (83 FR 45750). The public comment period ended on October 10, 2018, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

#### III. Discussion of Comments

FMCSA received two comments in this proceeding. Vicky Johnson of the Minnesota Department of Public Safety has no objections to Nathanael Lee or James Wright being granted an exemption. Valerie Chung agrees with FMCSA's decision to grant exemptions to the drivers listed in this notice, and supports the determination that doing so is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption.

#### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years from the vision standard in

49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows applicants to operate CMVs in interstate commerce. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 10, 2018, **Federal Register** notice (83 FR 45750) and will not be repeated in this notice.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 12 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, enucleation, macular hole, macular scar, prosthesis, retinal detachment, and retinal scar. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that sustained their vision conditions as adults have had it for a range of 3 to 20 years. Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 80 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a certified Medical Examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR 391.41(b)(10), subject to the requirements cited above:

John A. Edison (GA)
Rodney P. Hains (ND)
Darryl D. Kelley (TX)
Thomas J. Knapp (WA)
Darrell D. Kropf (CA)
Nathanael Lee (MN)
John G. Mudd (KY)
Jeffrey Ridenhour (AR)
John R. Russ II (NC)
Gary A. Ulitsch (CT)
Casey O. Wootan (MT)
James C. Wright (MN)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 1, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–24553 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0270]**

### Hours of Service of Drivers: National Tank Truck Carriers, Massachusetts Motor Transportation Association; Exemption Correction

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

**ACTION:** Correction of exemption.

**SUMMARY:** FMCSA amends its April 9, 2018, Notice of Final Disposition granting a limited exemption to the National Tank Truck Carriers, Inc. (NTTC) and the Massachusetts Motor Transport Association, Inc. (MMTA) from the requirement that drivers of commercial motor vehicles (CMVs) obtain a 30-minute rest break. The Agency granted the limited exemption to drivers of CMVs transporting specified fuels, and failed to include propane gas as a specified fuel as

requested by the National Propane Gas Association (NPGA). This notice corrects that oversight.

**DATES:** The exemption is effective April 9, 2018 and expires on April 10, 2023.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, please contact Mr. Buz Schultz, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2718; Email: *Buz.Schultz@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Request for Exemption**

NTTC and MMTA applied for an exemption from the 30-minute rest break provision of the hours of service (HOS) rules (49 CFR part 395) on behalf of motor carriers and drivers operating tank trucks to transport certain petroleum-based products in interstate commerce. The tank trucks are normally loaded with products in the morning, and deliver the products to three or more service stations during the remainder of the duty day. Most of the estimated 38,000 vehicles engaged in such transportation each day qualify for the 100 air-mile radius exception, but circumstances beyond the control of the motor carrier and driver occasionally cause delays in the delivery schedule. If a driver cannot complete his or her duty day within the 12-hour period specified by the 100 air-mile radius exception, he or she must at the first opportunity take a 30-minute rest break. This is problematic, however, for tank truck drivers delivering hazardous materials (HM). For instance, as a security measure, a motor carrier may require that a tank truck transporting certain fuels be attended by the driver when the vehicle is stopped, and a driver attending a CMV is not off duty as required by the rest-break rule. It is also difficult to find safe and secure parking for tank trucks on such short notice.

On September 26, 2017, FMCSA published notice of the application for exemption and asked for public comment (82 FR 44871). The National Propane Gas Association (NPGA) submitted a request for the inclusion of transporters of propane gas if the exemption were granted. FMCSA determined that the level of safety achieved by drivers transporting petroleum and propane products under the terms and conditions of the exemption, would be equal to, or greater than, the level of safety that would be achieved if the drivers were required to take the rest break. On April 9, 2018, the Agency granted a limited exemption (83 FR 15221). All drivers exercising the exemption must maintain an HOS log and complete their duty day within 14 hours. FMCSA inadvertently failed to include the products transported by NPGA motor carriers and drivers: propane fuels U.N. 1075 and U.N. 1978. This notice corrects that oversight. The NTTC and MMTA have advised that they have no objection.

FMCSA corrects this oversight by amending paragraph 3 of the Terms and Conditions published on April 9, 2018. The amendment adds the propane fuels U.N. 1075 and U.N. 1978 to the products listed in that paragraph. Qualifying drivers transporting these products are entitled to the exemption from the 30-minute rest break. The expiration date of this exemption remains unchanged: April 10, 2023. The complete Terms and Conditions, as amended today, are as follows:

**Terms and Conditions of the Exemption**

1. This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is effective April 9, 2018 and expires on April 10, 2023.

2. This exemption applies when a driver who normally operates under the 49 CFR 395.1(e)(1) short-haul exception finds that operational issues require him or her to exceed the 12-hour limit of that exception. Drivers operating under this exemption must, however, return to their work reporting location and be released from duty within 14 hours of having come on duty following 10 or more consecutive hours off duty.

3. This exemption is limited to motor carriers and drivers engaged in the transportation of the following petroleum products: U.N. 1170—Ethanol, U.N. 1202—Diesel Fuel, U.N. 1203—Gasoline, U.N. 1863—Fuel, aviation, turbine engine, U.N. 1993—Flammable liquids, n.o.s. (gasoline), U.N. 3475—Ethanol and gasoline mixture, Ethanol and motor spirit mixture, or Ethanol and petrol mixture, N.A. 1993—Diesel Fuel or Fuel Oil, U.N. 1075 and U.N. 1978—propane fuels.

4. This exemption is further limited to motor carriers that have an FMCSA ''satisfactory'' safety rating or are ''unrated''; motor carriers with ''conditional'' or ''unsatisfactory'' safety ratings are prohibited from utilizing this exemption.

5. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption and must present it to law enforcement officials upon request.

**Accident Reporting**

Motor carriers employing this exemption must notify FMCSA by email addressed to *MCPSD@DOT.GOV* within 5 business days of any accident (as defined in 49 CFR 390.5T) that occurs while its driver is operating under the terms of this exemption. The notification must include:

a. Identifier of the Exemption: ''NTTC,''

b. Name of operating carrier and USDOT number,

c. Date of the accident,

d. City or town, and State, in which the accident occurred, or closest to the accident scene,

e. Driver's name and license number,

f. Name of co-driver, if any, and license number,

g. Vehicle number and state license number,

h. Number of individuals suffering physical injury,

i. Number of fatalities,

j. The police-reported cause of the accident,

k. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

l. The total driving time and total on-duty time prior to the accident.

**Safety Oversight**

FMCSA expects the motor carriers and drivers operating under the terms and conditions of this exemption to maintain their safety record. However, should safety deteriorate, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

**Preemption**

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce

Issued on: November 1, 2018.

**Raymond P. Martinez,**

*Administrator.*

[FR Doc. 2018–24551 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0207]**

## Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 18 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before December 10, 2018.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0207 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*To avoid duplication, please use only one of these four methods.* See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0207), 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 or 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0207, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then 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.

*B. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0207, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility 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, 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.*

### II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 18 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a

person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

## III. Qualifications of Applicants

*Alejandro R. Almaguer*

Mr. Almaguer, 56, has a cataract in his right eye due to a traumatic incident in 2008. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''It is my opinion that Mr. Almaguer has sufficient vision to operate a commercial motor vehicle.'' Mr. Almaguer reported that he has driven straight trucks for ten years, accumulating 500,000 miles, and tractor-trailer combinations for 12 years, accumulating 2.28 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Abdallah A. Alserhan*

Mr. Alserhan, 37, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, ''Based on the exam from July 17 2018, My Alserhan vision is adequate in OD(20/40 or better) and full fields in OD to drive a commercial vehicle *[sic].*'' Mr. Alserhan reported that he has driven straight trucks for three years, accumulating 150,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jason D. Burke*

Mr. Burke, 34, has had optic nerve hypoplasia in his right eye since birth. The visual acuity in his right eye is hand motion, and in his left eye, 20/30. Following an examination in 2018, his ophthalmologist stated, ''Mr. Burke does have sufficient vision to operate a commercial vehicle.'' Mr. Burke reported that he has driven straight trucks for four years, accumulating 120,000 miles. He holds an operator's license from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Patricio C. Carvalho*

Mr. Carvalho, 39, has a prosthetic left eye due to a traumatic incident in 2007. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, ''He has sufficient vision to operate a commercial vehicle.'' Mr. Carvalho reported that he has driven straight trucks for 20 years, accumulating 2.4 million miles, and tractor-trailer combinations for one year, accumulating 55,000 miles. He holds a Class A CDL from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*John B. Casper*

Mr. Casper, 49, has aphakia in his right eye due to a traumatic incident in 2015. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''In my medical opinion John has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Casper reported that he has driven tractor-trailer combinations for 31 years, accumulating 3.1 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Denis Cuzimencov*

Mr. Cuzimencov, 22, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''I certify that in my medical opinion, Denis Cuzimencov has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cuzimencov reported that he has driven straight trucks for three years, accumulating 16,437 miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Liam F. Gilliland*

Mr. Gilliland, 25, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, ''In my opinion he safely meets the standards to operate a commercial motor vehicle with sufficient vision.'' Mr. Gilliland reported that he has driven straight trucks for four years, accumulating 80,000 miles, and tractor-trailer combinations for two years, accumulating 4,000 miles. He holds a Class A CDL from Massachusetts. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Steven M. Huddleston*

Mr. Huddleston, 30, has had a hamartoma in his left eye since birth.

The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2018, his optometrist stated, ''In my medical opinion Mr. Huddleston has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Huddleston reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds an operator's license from New Mexico. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Bradley W. Leonard*

Mr. Leonard, 59, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2018, his optometrist stated, ''Based on his driving record and peripheral vision I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Leonard reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.3 million miles. He holds a Class A3 CDL from South Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Edward J. Lewis*

Mr. Lewis, 57, has had a central vein occlusion in his left eye since 2002. The visual acuity in his right eye is 20/13, and in his left eye, 20/60. Following an examination in 2018, his ophthalmologist stated, ''I certify that in my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for four years, accumulating 48,000 miles, tractor-trailer combinations for 12 years, accumulating 1.74 million miles, and buses for one year, accumulating 15,000 miles. He holds a Class A CDL from Utah. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Bradley W. Lovelace*

Mr. Lovelace, 34, has a macular scar in his right eye due to a traumatic incident in 2014. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2018, his ophthalmologist stated, ''It is my opinion that he can safely operate a commercial motor vehicle based on stable exam findings today, good VA OS, and full fields with both eyes together.'' Mr. Lovelace reported that he has driven tractor-trailer combinations for 11 years, accumulating 962,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Tyler McFee*

Mr. McFee, 34, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/15, and in his left eye, 20/70. Following an examination in 2018, his optometrist stated, ''From these results I believe Mr. McFee has sufficient visual acuity, visual field, and color vision to continue to safely operate a commercial vehicle.'' Mr. McFee reported that he has driven straight trucks for seven years, accumulating 770,000 miles, and tractor-trailer combinations for six years, accumulating 1.8 million miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Joseph L. Rigsby*

Mr. Rigsby, 23, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2018, his optometrist stated, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rigsby reported that he has driven straight trucks for five years, accumulating 65,000 miles. He holds an operator's license from Alabama. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Stephen A. Scales*

Mr. Scales, 63, has aphakia in his right eye due to a traumatic incident in 2008. The visual acuity in his right eye is no light perception, and in his left eye, 20/16. Following an examination in 2018, his ophthalmologist stated, ''In my opinion, he is visually able to drive a commercial vehicle.'' Mr. Scales reported that he has driven straight trucks for three years, accumulating 195,000 miles, tractor-trailer combinations for 33 years, accumulating 2 million miles, and buses for one year, accumulating 15,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Paul K. Sears*

Mr. Sears, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2018, his optometrist stated, ''In my opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sears reported that he has driven straight trucks for four years, accumulating 80,000 miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Michael D. Vander Zwaag*

Mr. Vander Zwagg, 49, has had a macular scar in his right eye since 2009. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''I believe Michael's left eye compensates for any deficiency to field and that he is safe to drive a commercial vehicle.'' Mr. Vander Zwagg reported that he has driven straight trucks for four years, accumulating 48,000 miles, and tractor-trailer combinations for five years, accumulating 100,000 miles. He holds an operator's license from Iowa. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Phillip J. Vecchioni*

Mr. Vecchioni, 56, has had complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, ''In my medical opinion Mr. Vecchioni has sufficient vision to perform the driving required to operate a commercial vehicle.'' Mr. Vecchioni reported that he has driven straight trucks for ten years, accumulating 250,000 miles. He holds an operator's license from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Nathaniel C. Volk*

Mr. Volk, 36, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''In my medical opinion, Mr. Volk has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Volk reported that he has driven straight trucks for three years, accumulating 207,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no

convictions for moving violations in a CMV.

**IV. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: November 1, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–24556 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210; FMCSA–2016–0212]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 67 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before December 10, 2018.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210; FMCSA–2016–0212 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*To avoid duplication, please use only one of these four methods.* See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210; FMCSA–2016–0212), 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 or 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210; FMCSA–2016–0212, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then 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.

*B. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210; FMCSA–2016–0212, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility 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, 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.*

## II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds that such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 67 individuals listed in this notice have requested renewal of their exemptions from the vision standard in 49 CFR 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

## IV. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than five years from its approval date and may be renewed upon application. FMCSA grants exemptions from the vision standard for a two-year period to align with the maximum duration of a driver's medical certification. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 67 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66227; 64 FR 16520; 65 FR 33406; 65 FR 45817; 65 FR 57234; 65 FR 77066; 67 FR 46016; 67 FR 57266; 67 FR 57627; 67 FR 71610; 69 FR 51346; 69 FR 52741; 69 FR 53493; 69 FR 62742; 69 FR 64810; 71 FR 50970; 71 FR 53489; 71 FR 62148; 71 FR 66217; 73 FR 38497; 73 FR 46973; 73 FR 48273; 73 FR 51336; 73 FR 51689; 73 FR 54888; 73 FR 61922; 73 FR 61925; 73 FR 63047; 73 FR 74565; 73 FR 75807; 75 FR 25918; 75 FR 34209; 75 FR 39725; 75 FR 39729; 75 FR 44051; 75 FR 47883; 75 FR 47886; 75 FR 52062; 75 FR 52063; 75 FR 61833; 75 FR 63257; 75 FR 64396; 75 FR 77949; 76 FR 67248; 76 FR 79761; 77 FR 36338; 77 FR 38381; 77 FR 46153; 77 FR 46793; 77 FR 51846; 77 FR 52388; 77 FR 52389; 77 FR 56262; 77 FR 59245; 77 FR 60008; 77 FR 60010; 77 FR 64582; 77 FR 64839; 77 FR 68202; 77 FR 71671; 77 FR 75494; 78 FR 64274; 78 FR 76705; 78 FR 77778; 79 FR 1908; 79 FR 14333; 79 FR 14571; 79 FR 28588; 79 FR 35220; 79 FR 38659; 79 FR 41740; 79 FR 46153; 79 FR 46300; 79 FR 52388; 79 FR 53514; 79 FR 56099; 79 FR 56104; 79 FR 58856; 79 FR 65759; 79 FR 65760; 79 FR 69985; 79 FR 70928; 79 FR 72754; 79 FR 73393; 80 FR 8927; 80 FR 76345; 81 FR 21647; 81 FR 26305; 81 FR 52514; 81 FR 59266; 81 FR 66724; 81 FR 68098; 81 FR 70248; 81 FR 70253; 81 FR 71173; 81 FR 72664; 81 FR 74494; 81 FR 80161; 81 FR 81230; 81 FR 86063; 81 FR 90046; 81 FR 90050; 81 FR 94013; 81 FR 96180; 81 FR 96191; 82 FR 12683). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of December and are discussed below. As of December 3, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 38 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66227; 64 FR 16520; 65 FR 33406; 65 FR 57234; 67 FR 46016; 67 FR 57266; 67 FR 57627; 69 FR 51346; 69 FR 52741; 71 FR 50970; 71 FR 53489; 73 FR 38497; 73 FR 46973; 73 FR 48273; 73 FR 51336; 73 FR 51689; 73 FR 54888; 73 FR 63047; 73 FR 75807; 75 FR 25918; 75 FR 34209; 75 FR 39725; 75 FR 39729; 75 FR 44051; 75 FR 47883; 75 FR 47886; 75 FR 52062; 75 FR 52063; 75 FR 61833; 75 FR 63257; 75 FR 64396; 76 FR 67248; 76 FR 79761; 77 FR 36338; 77 FR 38381; 77 FR 46153; 77 FR 46793; 77 FR 51846; 77 FR 52388; 77 FR 52389; 77 FR 56262; 77 FR 59245; 77 FR 60008; 77 FR 60010; 77 FR 64582;

77 FR 71671; 78 FR 64274; 78 FR 76705; 78 FR 77778; 79 FR 1908; 79 FR 14333; 79 FR 14571; 79 FR 28588; 79 FR 35220; 79 FR 38659; 79 FR 41740; 79 FR 46153; 79 FR 46300; 79 FR 52388; 79 FR 53514; 79 FR 56099; 79 FR 56104; 79 FR 58856; 79 FR 65760; 79 FR 70928; 79 FR 72754; 80 FR 76345; 81 FR 21647; 81 FR 26305; 81 FR 52514; 81 FR 59266; 81 FR 66724; 81 FR 68098; 81 FR 70248; 81 FR 70253; 81 FR 71173; 81 FR 72664; 81 FR 74494; 81 FR 80161; 81 FR 81230; 81 FR 90046; 81 FR 90050; 81 FR 94013; 81 FR 96180; 81 FR 96191):

Gary R. Andersen (NE)
Theodore N. Belcher (VA)
Daniel S. Billig (MN)
Thomas A. Black (MO)
Robert S. Bowen (GA)
Brian E. Broux (CA)
John M. Brown (KY)
Tracy L. Butcher (VA)
Jonathan E. Carriaga (NM)
Irvin L. Eaddy (SC)
Terry J. Edwards (MO)
Stephen R. Ehlenburg (IL)
Frank J. Faria (CA)
Christopher K. Foot (NV)
Claudia E. Gerez-Betancourt (TX)
Billy R. Gibbs (MD)
Samuel R. Graziano (PA)
Tyrane Harper (AL)
Christopher M. Keen (KS)
Theodore Kirby (MD)
Johnny Montemayor (TX)
Derrick P. Moore (MN)
Richard L. Moores (CO)
Aaron F. Naylor (PA)
Billy R. Oguynn (AL)
Ronald W. Patten (ME)
Benny D. Patterson (OH)
Alexander L. Resh (PA)
David T. Rueckert (WA)
Benito Saldana (TX)
Daniel Salinas (OR)
Kenneth D. Sisk (NC)
Sherman L. Taylor (FL)
Richard T. Traigle (LA)
Melvin V. Van Meter (PA)
Emejildo M. Vargas (NH)
Christopher M. Vincent (NC)
Wilbert Walden (NC)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2002–12294; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2011–0276; FMCSA–2012–0160; FMCSA–2012–0214; FMCSA–2012–0279; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0296; FMCSA–2015–0344; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0210. Their exemptions are applicable as of December 3, 2018, and will expire on December 3, 2020.

As of December 8, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 45817; 65 FR 77066; 67 FR 71610; 69 FR 53493; 69 FR 62742; 69 FR 64810; 71 FR 62148; 71 FR 66217; 73 FR 61922; 73 FR 61925; 73 FR 74565; 75 FR 77949; 77 FR 68202; 79 FR 65759; 81 FR 96180):

Ronald W. Garner (WA)
Wayne R. Mantela (KY)
Carl M. McIntire (OH)
Bernice R. Parnell (NC)
Patrick W. Shea (MA)
Roy F. Varnado, Jr. (LA)
Michael J. Welle (MN)

The drivers were included in docket numbers FMCSA–2000–7363; FMCSA–2004–18885; FMCSA–2008–0292. Their exemptions are applicable as of December 8, 2018, and will expire on December 8, 2020.

As of December 20, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 64839; 77 FR 75494; 79 FR 73393; 81 FR 96180):

Ronald J. Bergman (OH)
Noah E. Bowen (OH)
Lawrence D. Malecha (MN)
Jerry M. Puckett (OH)
Emin Toric (GA)

The drivers were included in docket number FMCSA–2012–0280. Their exemptions are applicable as of December 20, 2018, and will expire on December 20, 2020.

As of December 25, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 69985; 80 FR 8927; 81 FR 96180):

Thurman T. Clayton (LA)
Tig G. Cornell (ID)
Jon R. Davidson (CO)
Edwin T. Donaldson (PA)
Keith C. Lendt (MN)
Joseph McTear (TX)
Daniel R. Thompson (PA)

The drivers were included in docket number FMCSA–2014–0298. Their exemptions are applicable as of December 25, 2018, and will expire on December 25, 2020.

As of December 30, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 86063; 82 FR 96180):

Brian T. Castoldi (CT)
Willie George (NY)
David E. Goff (MA)
Michal Golebiowski (IL)
Loyd F. Hovey (NY)
George T. Huffman (IL)
Julio Rivera (FL)
Willie J. Smith (TX)
John D. Stork (IL)
James R. Wagner (IL)

The drivers were included in docket number FMCSA–2016–0212. Their exemptions are applicable as of December 30, 2018, and will expire on December 30, 2020.

## V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified Medical Examiner, as defined by 49 CFR 390.5, who attests that the driver is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self- employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VI. Conclusion**

Based upon its evaluation of the 67 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 1, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–24552 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2018–0164]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MONEY CAT; Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before December 10, 2018.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2018–0164 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0164 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0164, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, 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.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel MONEY CAT is:

—*Intended Commercial Use of Vessel:* Private Vessel Charters, Passengers Only. Crewed private Passenger private charter for domestic coastline travel. Vessel will also be used commercially for television commercials and/or movies. 50% of the time, the vessel does not leave the slip, is used for background shots

—*Geographic Region Including Base of Operations:* ''California, Washington, Oregon, and Alaska (excluding waters in Southeast Alaska)'' (Base of Operations: San Pedro, CA)

—*Vessel Length and Type:* 84′ Motor vessel with flybridge

The complete application is available for review identified in the DOT docket as MARAD–2018–0164 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2018–0164 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

**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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * *

Dated: November 5, 2018.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2018–24506 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2018–0165]**

### Request for Comments on the Renewal of a Previously Approved Information Collection: Maritime Administration Annual Service Obligation Compliance Report

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The information collection is necessary to determine if a graduate of the U.S. Merchant Marine Academy or subsidized State maritime academy graduate is complying with the terms of the service obligation. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 1, 2018 and comments were due by October 1, 2018. No comments were received.

**DATES:** Comments must be submitted on or before December 10, 2018.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Danielle Bennett, Telephone: 202–366–5296, Office of Maritime Labor and Training, Maritime Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Title:* Maritime Administration Annual Service Obligation Compliance Report.

*OMB Control Number:* 2133–0509.

*Type of Request:* Renewal of a Previously Approved Information Collection.

*Abstract:* 46 U.S.C. 51306 and 46 U.S.C. 51509 imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every State maritime academy student incentive payment program graduate. This mandatory service obligation is for the Federal financial assistance the graduate received as a student. The obligation consists of (1) maintaining a U.S. Coast Guard merchant mariner credentials with an officer endorsement; (2) serving as a commissioned officer in the U.S. Naval Reserve, the U.S. Coast Guard Reserve or any other reserve unit of an armed force of the United States following graduation from an academy (3) serving as a merchant marine officer on U.S.-flag vessels or as a commissioned officer on active duty in an armed or uniformed force of the United States, NOAA Corps, USPHS Corps, or other MARAD approved service; and (4) report annually on their compliance with their service obligation after graduation.

*Respondents:* Graduates of the U.S. Merchant Marine Academy and State maritime academy student incentive payment program graduates.

*Affected Public:* Individuals and/or household.

*Estimated Number of Respondents:* 2,100.

*Estimated Number of Responses:* One response per Respondent.

*Estimated Hours per Response:* 20 minutes.

*Annual Estimated Total Annual Burden Hours:* 700.

*Frequency of Response:* Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93).

* * * * *

Dated: November 5, 2018.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2018–24508 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2018–0163]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HARLEY G; Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before December 10, 2018.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2018–0163 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0163 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0163, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, 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.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel HARLEY G is:

—*Intended Commercial Use of Vessel:* Private Vessel Charters, Passengers Only. Crewed private Passenger private charter for domestic coastline travel. Vessel will also be used commercially for television commercials and/or movies. 50% of the time, the vessel does not leave the slip, is used for background shots

—*Geographic Region Including Base of Operations:* ''California, Washington, Oregon, and Alaska (excluding waters in Southeast Alaska)'' (Base of Operations: San Pedro, CA)

—*Vessel Length and Type:* 97′.1″ Tri-deck Motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2018–0163 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2018–0163 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

**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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * *

Dated: November 5, 2018.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2018–24507 Filed 11–8–18; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Market Risk

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Market Risk.''

**DATES:** You should submit written comments by: January 8, 2019.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0247, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–00247'' in your comment. In general, the OCC will publish them on *www.reginfo.gov* without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the

date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit''. This information collection can be located by searching by OMB control number ''1557–0247'' or ''Market Risk.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street, SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

*Title:* Market Risk.

*OMB Control No.:* 1557–0247.

*Description:* The Office of the Comptroller of the Currency's (OCC) market risk capital rules (12 CFR part 3, subpart F) apply to national banks and federal savings associations with significant exposure to market risk, which include those national banks and federal savings associations with aggregate trading assets and trading liabilities (as reported in the national bank's or federal savings association's most recent Call Report) equal to 10 percent or more of quarter-end total assets or $1 billion or more. The rules capture positions for which the market risk capital rules are appropriate; reduce procyclicality in market risk capital requirements; enhance the risk sensitivity of the OCC's capital requirements by measuring risks that are not adequately captured under the requirements for credit risk; and increase transparency through enhanced disclosures.

The information collection requirements are located at 12 CFR 3.203 through 3.212. The rules enhance risk sensitivity and include requirements for the public disclosure of certain qualitative and quantitative information about the market risk of national banks and federal savings associations. The collection of information is necessary to ensure capital adequacy appropriate for the level of market risk.

Section 3.203 sets forth the requirements for applying the market risk framework. Section 3.203(a)(1) requires national banks and federal savings associations to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and specifies the factors a national bank or federal savings association must take into account in drafting those policies and procedures. Section 3.203(a)(2) requires national banks and federal savings associations to have clearly defined trading and hedging strategies for trading positions that are approved by senior management and specifies what those strategies must articulate. Section 3.203(b)(1) requires national banks and federal savings associations to have clearly defined policies and procedures for actively managing all covered positions and specifies the minimum requirements for those policies and procedures. Sections 3.203(c)(4) through 3.203(c)(10) require the review, at least annually, of internal models and specify certain requirements for those models. Section 3.203(d)(4) requires the internal audit group of a national bank or federal savings association to report, at least annually, to the board of directors on the effectiveness of controls supporting the market risk measurement systems.

Section 3.204(b) requires national banks and federal savings associations to conduct quarterly backtesting. Section 3.205(a)(5) requires institutions to demonstrate to the OCC the appropriateness of proxies used to capture risks within value-at-risk models. Section 3.205(c) requires institutions to develop, retain, and make available to the OCC value-at-risk and profit and loss information on sub-portfolios for two years. Section 3.206(b)(3) requires national banks and federal savings associations to have policies and procedures that describe how they determine the period of significant financial stress used to calculate the institution's stressed value-at-risk models and to obtain prior OCC approval for any material changes to these policies and procedures.

Section 3.207(b)(1) details requirements applicable to a national bank or federal savings association when the national bank or federal savings association uses internal models to measure the specific risk of certain covered positions. Section 3.208 requires national banks and federal savings associations to obtain prior written OCC approval for incremental risk modeling. Section 3.209(a) requires prior OCC approval for the use of a comprehensive risk measure. Section 3.209(c)(2) requires national banks and federal savings associations to retain and report the results of supervisory stress testing. Section 3.210(f)(2)(i) requires national banks and federal savings associations to document an internal analysis of the risk characteristics of each securitization position in order to demonstrate an understanding of the position. Section 3.212 requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the approach for determining the market risk disclosures it makes.

*Type of Review:* Extension of a currently approved collection. *Affected Public:* Individuals; Businesses or other for-profit.

*Number of Respondents:* 12.

*Estimated Burden per Respondent:* 1,964 hours.

*Total Estimated Annual Burden:* 25,568 hours.

Comments submitted in response to this notice will be summarized,

[1] Following the close of the 60-Day comment period for this notice, the OCC will publish a notice for 30 days of comment for this collection.

included in the request for OMB approval, and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC'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 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.

Dated: November 5, 2018.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Comptroller of the Currency.*

[FR Doc. 2018–24494 Filed 11–8–18; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Consumer Protections for Depository Institution Sales of Insurance

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, 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 a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled ''Consumer Protections for Depository Institution Sales of Insurance.''

**DATES:** Comments must be received by January 8, 2019.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0220, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0220'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0220'' or ''Consumer Protections for Depository Institution Sales of Insurance.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

[1] Following the close of the 60-Day comment period for this notice, the OCC will publish a notice for 30 days of comment for this collection.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from 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) to include 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 part 44 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 OCC is publishing notice of the collection of information set forth in this document.

*Title:* Consumer Protections for Depository Institution Sales of Insurance.

*OMB Control No.:* 1557–0220.

*Type of Review:* Extension, without revision, of a currently approved collection.

*Description:* This information collection is required under section 305 of the Gramm-Leach-Bliley Act (GLB Act), 12 U.S.C. 1831x. Section 305 of the GLB Act requires the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) to prescribe joint consumer protection regulations that apply to retail sales practices, solicitations, advertising, and offers of any insurance product by a depository institution or by other persons performing these activities at an office of the institution or on behalf of the institution (other covered persons). Section 305 also requires those performing such activities to disclose certain information to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured).

This information collection requires national banks, federal savings associations, and other covered persons involved in insurance sales, as defined in 12 CFR 14.20(f), to make two separate disclosures to consumers. Under 12 CFR 14.40, a national bank, federal savings association, or other covered person must prepare and provide orally and in writing: (1) Certain insurance disclosures to consumers before the completion of the initial sale of an insurance product or annuity to a consumer and (2) certain credit disclosures at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Consumers use the disclosures to understand the risks associated with insurance products and annuities and to understand that they are not required to purchase, and may refrain from purchasing, certain insurance products or annuities in order to qualify for an extension of credit.

*Affected Public:* Businesses or other for-profit.

*Frequency:* On occasion.

*Estimated Burden:*

*Estimated Number of Respondents:* 527.

*Total Estimated Burden Hours:* 2,635 hours.

*Comments:* Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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 the operation, maintenance, and purchase of services necessary to provide the required information.

Dated: November 5, 2018.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2018–24495 Filed 11–8–18; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Relief for Service in Combat Zone and for Presidentially Declared Disaster

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. Currently, the IRS is soliciting comments concerning guidance related to the postponement of certain acts by reason of service in a combat zone or relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster.

**DATES:** Written comments should be received on or before January 8, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6236, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Relief for Service in Combat Zone and for Presidentially Declared Disaster.

*OMB Number:* 1545–XXXX.

*Regulation Project Number:* TD 8911, TD 9443, Form 15109.

*Abstract:* This collection covers the final rules to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997. Form 15109 is being created to help taxpayers, including Civilian taxpayers working with U.S. Armed Forces, qualifying for such combat zone relief, provide the IRS with the appropriates dates.

*Current Actions:* This is a new request for approval.

*Type of Review:* New collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 20,000.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 6,600.

The following paragraph applies to all 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 if 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.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 29, 2018.

**Laurie Brimmer,**

*IRS, Senior Tax Analyst.*

[FR Doc. 2018–24578 Filed 11–8–18; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Terrorism Risk Insurance Program 2019 Data Call

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Request for comments.

**SUMMARY:** Pursuant to the Terrorism Risk Insurance Act of 2002 (TRIA),[1] the Federal Insurance Office (FIO) requests public feedback on the proposed data collection forms for use in the 2019 Terrorism Risk Insurance Program Data Call (2019 TRIP Data Call). As was the case in connection with the 2018 TRIP Data Call, these forms will be utilized in connection with both the federal and state data calls regarding terrorism risk insurance. Copies of these forms and associated explanatory materials (including a document identifying specific changes to the reporting templates and instructions as previously used by Treasury) are available for electronic review on the Treasury website at *https://www.treasury.gov/resource-center/fin-mkts/Pages/TRIP_data.aspx.* State insurance regulators, through the National Association of Insurance Commissioners (NAIC), will also be separately seeking comment from stakeholders on the state data call.

**DATES:** Submit comments on or before January 8, 2019.

**ADDRESSES:** Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments concerning the proposed data collection forms and collection process should be captioned with ''2019 TRIP Data Call Comments.'' Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

**FOR FURTHER INFORMATION CONTACT:** Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (not a toll-free number), or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, at (202) 622–3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Proposed Consolidated Approach

TRIA created the Terrorism Risk Insurance Program (Program) within the U.S. Department of the Treasury (Treasury) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, most recently in the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).[2] Section 111 of the 2015 Reauthorization Act [3] (Section 111) requires the Secretary of the Treasury (Secretary) to perform periodic analyses of certain matters concerning the Program. In order to assist the Secretary with this process, Section 111 requires insurers to submit on an annual basis certain insurance data and information regarding their participation in the Program. FIO is authorized to assist the Secretary in the administration of the Program.[4]

Treasury began collecting data from insurers in 2016 on a voluntary basis,[5] and on a mandatory basis beginning in 2017.[6] Treasury also arranged in 2017 for workers' compensation rating bureaus to provide most of the workers' compensation insurance data elements.[7] 31 CFR 50.51 requires insurers to submit the specified data no later than May 15 of each calendar year.[8] In 2018, Treasury and state insurance regulators (which also collect information on terrorism risk insurance in separate data calls) agreed on joint reporting templates substantially similar to those used by Treasury in prior years. For 2019, Treasury and state regulators plan on a similar approach to the collection of terrorism risk insurance data, subject to a number of minor changes to the forms utilized in connection with the 2018 TRIP Data Call. Treasury identifies the proposed changes below.

Insurers subject to the consolidated data call will report on a group basis, if part of a group, and otherwise will report on an individual company basis.

### II. Changes to Data Collection Templates

Pursuant to Section 111 of the 2015 Reauthorization Act, Treasury has coordinated with publicly available sources to collect information for the 2019 TRIP Data Call. Information relating to workers' compensation exposures is available from the workers' compensation rating bureaus, and those entities have again agreed to provide that information on behalf of participating insurers. Treasury has determined, however, that all other data components remain unavailable from other sources. Accordingly, Treasury will continue to request this remaining data and information directly from insurers. By continuing to collect information on a consolidated basis with state regulators, however, a significant reduction in overall data collection burdens for participating insurers is achieved.

After coordinating with state insurance regulators, Treasury again proposes to use four different data collection templates (see 31 CFR 50.51(c)), depending upon the type of insurer involved. Insurers will fill out the template identified ''Insurer (Non-Small) Groups or Companies,'' unless the insurer meets the definition of a small insurer, captive insurer, or alien surplus lines insurer as set forth in 31 CFR 50.4. Such small insurers, captive insurers, and alien surplus lines insurers are required to complete separate tailored templates. Each template will be accompanied by separate instructions providing guidance on each data element.

There are two principal changes to the proposed reporting templates for 2019. First, the exposures worksheet, which is included within all four reporting templates, will now include separate questions seeking information on the limits available under the policies of responding insurers for nuclear, biological, chemical and radiological (NBCR) exposures, as a subset of the

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Public Law 114–1, 129 Stat. 3.

[3] TRIA sec. 104(h).

[4] 31 U.S.C. 313(c)(1)(D).

[5] 81 FR 11649 (March 4, 2016).

[6] A reporting exemption was extended to small insurers that wrote less than $10 million in TRIP-eligible lines premiums in 2016. *See* 81 FR 95310 (December 27, 2016); 82 FR 20420 (May 1, 2017).

[7] 82 FR 20420 (May 1, 2017).

[8] Treasury, through an insurance statistical aggregator, uses a web portal through which insurers must submit the requested data. All information submitted via the web portal is subject to the confidentiality and data protection provisions of applicable federal law.

total reported policy limits. Second, the reinsurance worksheet that is required for non-small insurers, alien surplus lines insurers, and captive insurers will include a new modeled loss question (which includes an NBCR component).[9] In addition to these changes, the instructions for each reporting template will contain certain clarifications on how to report specific data elements.

Otherwise, the reporting threshold for a small insurer has changed as well. For the 2019 TRIP Data Call (requesting insurer data for calendar year 2018), an insurer will qualify as a small insurer if it had both *2017* policyholder surplus and *2017* direct earned premiums in the TRIP-eligible lines of insurance of less than $800 million.[10] Insurers above this threshold will report on the non-small insurer template, unless they are otherwise subject to reporting on either the captive insurer template [11] or the alien surplus lines insurer [12] template. Small insurers that had TRIP-eligible direct earned premiums of less than $10 million in 2018 will be exempt from the 2019 TRIP Data Call.[13] Neither captive insurers nor alien surplus lines insurers are eligible for this reporting exemption.

Reporting insurers can satisfy both the federal and state reporting obligations by completing the proposed collection forms, and separately submitting identical copies to the federal and state reporting portals. State insurance regulators will provide their own guidance regarding the submission of data to the state reporting portal.

## III. Submission of Data

Following registration with the data aggregator, all insurers will be provided with the appropriate reporting templates for completion through a secure web portal established by the data aggregator. Insurers will be required to submit the completed reporting templates through the same, secure web portal. All data must be provided no later than May 15, 2019, which will also be the reporting deadline for state insurance regulators. Treasury intends to provide training and provide additional resources throughout the data collection period to facilitate the proper completion of reporting templates. As was the case in 2018, insurers can report information in either Excel format or in .csv file format.

Reporting under the 2019 TRIP Data Call will be mandatory for all commercial property and casualty insurers writing insurance in lines subject to TRIA, unless the insurer falls within the exceptions for certain small insurers and captive insurers identified above.

## IV. Request for Comments

To ensure efficient and accurate completion of the forms, Treasury is requesting public feedback on the content of the 2019 TRIP Data Call reporting templates. The proposed forms are available for review at *https://www.treasury.gov/resource-center/fin-mkts/Pages/TRIP_data.aspx.*

## V. Procedural Requirements

*Paperwork Reduction Act.* The collection of information contained in this notice will be submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Comments should be sent to Treasury in the form discussed in the **ADDRESSES** section of this notice. Comments on the collection of information should be received by January 8, 2019.

Comments are being sought with respect to the collection of information in the proposed 2019 TRIP Data Call. *Treasury specifically invites comments on:* (a) Whether the proposed collection is responsive to the statutory requirement; (b) the accuracy of the estimate of the burden of the collections of information (*see below*); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to use 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 maintain the information.

Treasury has previously analyzed the potential burdens associated with the TRIP Data Calls. See 81 FR 95310, 95312 (December 27, 2016). The information sought by Treasury comprises data elements that insurers currently collect or generate, although not necessarily grouped together the way in which insurers currently collect and evaluate the data. Based upon insurer submissions to the 2018 TRIP Data Call, Treasury estimates that for purposes of the 2019 TRIP Data Call, approximately 100 Program participants will be required to submit the ''Insurer (Non-Small) Groups or Companies'' data collection form, 200 Program participants will be required to submit the ''Small Insurer'' form, 550 Program participants will be required to submit the ''Captive Insurer'' form, and 25 Program participants will be required to submit the ''Alien Surplus Lines Insurers'' form.

Each set of reporting templates is expected to incur a different level of burden. The changes to the proposed data reporting elements in 2019 are not anticipated to have a material impact on Treasury's prior burden estimates. Treasury anticipates approximately 75 hours will be required to collect, process, and report the data for each non-small insurer, approximately 25 hours will be required to collect, process, and report data for each small insurer, and 50 hours will be required to collect, process, and report data for each captive insurer and alien surplus lines insurer.

Assuming this breakdown, and when applied to the number of reporting insurers anticipated in light of the experience of the 2018 TRIP Data Call, the estimated annual burden would be 41,250 hours ((100 insurers × 75 hours) + (200 insurers × 25 hours) + (550 insurers × 50 hours) + (25 insurers × 50 hours)). At a blended, fully loaded hourly rate of $85, the cost would be $3,506,250 across the industry as a whole, or $6,375 per non-small insurer, $2,125 per small insurer, and $4,250 each per captive insurer or alien surplus lines insurer.

[9] Small insurers complete a separate reinsurance worksheet that does not contain a modeled loss question.

[10] Small insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger for the current year, and whose TRIP-eligible lines direct earned premiums for the previous year is also five times less than the Program Trigger. Accordingly, for the 2019 TRIP Data Call, an insurer qualifies as a small insurer if its 2017 policyholder surplus and 2017 direct earned premiums are less than five times the 2018 Program Trigger of $160 million. The Program Trigger is the amount of aggregate industry insured losses that must be sustained in a calendar year before the Program will make any payments, even in connection with a participating insurer that has otherwise satisfied its individual deductible. TRIA sec. 103(e)(1)(B).

[11] Captive insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. As in 2018, captive insurers that write policies in TRIP-eligible lines of insurance are required to report in 2019, unless they do not provide their insureds with any terrorism risk insurance subject to the Program.

[12] Alien surplus lines insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. Alien surplus lines insurers that are part of a larger group classified as a non-small insurer or a small insurer should report as part of the group, using the appropriate template. Therefore, the alien surplus lines insurer template should only be used by an alien surplus lines insurer that is not part of a larger group subject to the 2019 data call.

[13] To the extent an insurer with less than this level of TRIP-eligible lines direct earned premiums is part of a larger group that is required to report, the insurer must report as part of the group as a whole, even if it is under the $10,000,000 direct earned premium threshold on an individual basis. Individual company information for such entities must also be reported to state insurance regulators.

Dated: November 2, 2018.

**Steven J. Dreyer,**

*Director, Federal Insurance Office.*

[FR Doc. 2018–24546 Filed 11–8–18; 8:45 am]

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Part II

## Nuclear Regulatory Commission

10 CFR Part 50
American Society of Mechanical Engineers 2015–2017 Code Editions Incorporation by Reference; Proposed Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**[NRC–2016–0082]**

**RIN 3150–AJ74**

## American Society of Mechanical Engineers 2015–2017 Code Editions Incorporation by Reference

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the 2015 and 2017 Editions of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code) and the 2015 and 2017 Editions of the ASME *Operation and Maintenance of Nuclear Power Plants,* Division 1: OM: Section IST (OM Code), respectively, for nuclear power plants. The NRC is also proposing to incorporate by reference two revised ASME code cases. This action is in accordance with the NRC's policy to periodically update the regulations to incorporate by reference new editions of the ASME Codes and is intended to maintain the safety of nuclear power plants and to make NRC activities more effective and efficient.

**DATES:** Submit comments by January 23, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC 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 (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0082. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals 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:** James G. O'Driscoll, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1325, email: *James.O'Driscoll@nrc.gov;* or Keith Hoffman, Office of Nuclear Reactor Regulation, telephone: 301–415–1294, email: *Keith.Hoffman@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*A. Need for the Regulatory Action*

The NRC is proposing to amend its regulations to incorporate by reference the 2015 and 2017 Editions of the ASME BPV Code and the 2015 and 2017 Editions of the ASME OM Code, respectively, for nuclear power plants. The NRC is also proposing to incorporate by reference two ASME code cases.

This proposed rule is the latest in a series of rulemakings to amend the NRC's regulations to incorporate by reference revised and updated ASME Codes for nuclear power plants. The ASME periodically revises and updates its codes for nuclear power plants by issuing new editions, and this rulemaking is in accordance with the NRC's policy to update the regulations to incorporate those new editions into the NRC's regulations. The incorporation of the new editions will maintain the safety of nuclear power plants, make NRC activities more effective and efficient, and allow nuclear power plant licensees and applicants to take advantage of the latest ASME Codes. The ASME is a voluntary consensus standards organization, and the ASME Codes are voluntary consensus standards. The NRC's use of the ASME Codes is consistent with applicable requirements of the National Technology Transfer and Advancement Act (NTTAA). Additional discussion of voluntary consensus standards and the NRC's compliance with the NTTAA is set forth in Section VIII of this document, ''Voluntary Consensus Standards.''

*B. Major Provisions*

Major provisions of this proposed rule include:

- Incorporation by reference of ASME Codes (2015 and 2017 Editions of the BPV Code and the OM Code) into NRC regulations and delineation of NRC requirements for the use of these codes, including conditions.
- Incorporation by reference of two revised ASME Code Cases and delineation of NRC requirements for the use of these code cases, including conditions.
- Incorporation by reference of Electric Power Research Institute (EPRI), Materials Reliability Project (MRP) Topical Report, ''Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement'' (MRP–335, Revision 3–A), which provides requirements for the mitigation of primary water stress corrosion cracking (PWSCC) on Reactor Vessel Head penetrations and Dissimilar Metal Butt Welds.

*C. Costs and Benefits*

The NRC prepared a draft regulatory analysis to determine the expected costs and benefits of this proposed rule. The regulatory analysis identifies costs and benefits in both a quantitative fashion as well as in a qualitative fashion.

The analysis concludes that this proposed rule would result in a net quantitative averted cost to the industry and the NRC. This proposed rule, relative to the regulatory baseline, would result in a net averted cost for industry of $3.64 million based on a 7 percent net present value (NPV) and $4.17 million based on a 3 percent NPV. The estimated incremental industry averted cost per reactor unit ranges from $37,900 based on a 7 percent NPV to $43,300 based on a 3 percent NPV. The NRC benefits from the proposed rulemaking alternative because of the averted cost of not reviewing and approving Code alternative requests on a plant-specific basis under § 50.55a(z) of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC net benefit ranges from $2.81 million based on a 7 percent NPV to $3.49 million based on a 3 percent NPV.

Qualitative factors that were considered include regulatory stability and predictability, regulatory efficiency, and consistency with the NTTAA. Table 38 in the draft regulatory analysis includes a discussion of the costs and benefits that were considered qualitatively. If the results of the regulatory analysis were based solely on quantified costs and benefits, then the

regulatory analysis would show that the rulemaking is justified because the total quantified benefits of the proposed regulatory action do not equal or exceed the costs of the proposed action. Further, if the qualitative benefits (including the safety benefit, cost savings, and other non-quantified benefits) are considered together with the quantified benefits, then the benefits outweigh the identified quantitative and qualitative impacts.

With respect to regulatory stability and predictability, the NRC has had a decades-long practice of approving and/or mandating the use of certain parts of editions and addenda of these ASME Codes in § 50.55a through the rulemaking process of ''incorporation by reference.'' Retaining the practice of approving and/or mandating the ASME Codes continues the regulatory stability and predictability provided by the current practice. Retaining the practice also assures consistency across the industry, and provides assurance to the industry and the public that the NRC will continue to support the use of the most updated and technically sound techniques developed by the ASME to provide adequate protection to the public. In this regard, the ASME Codes are voluntary consensus standards developed by participants with broad and varied interests and have undergone extensive external review before being reviewed by the NRC. Finally, the NRC's use of the ASME Codes is consistent with the NTTAA, which directs Federal agencies to adopt voluntary consensus standards instead of developing ''government-unique'' (*i.e.,* Federal agency-developed) standards, unless inconsistent with applicable law or otherwise impractical.

For more information, please see the draft regulatory analysis (Accession No. ML18150A267 in the NRC's Agencywide Documents Access and Management System (ADAMS)).

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## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2016–0082 when contacting the NRC about the availability of information for this proposed rule. You may obtain information related to this proposed rule by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0082.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2016–0082 in your comment submission.

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 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 into ADAMS.

## II. Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components; and the ASME OM Code,[1] which contains requirements for inservice testing (IST) of nuclear power plant components. Until 2012, the ASME issued new editions of the ASME BPV Code every 3 years and addenda to the editions annually, except in years when a new edition was issued. Similarly, the ASME periodically published new editions and addenda of the ASME OM Code. Starting in 2012, the ASME decided to issue editions of its BPV and OM Codes (no addenda) every 2 years with the BPV Code to be issued on the odd years (*e.g.,* 2013, 2015, etc.) and the OM Code to be issued on the even years[2] (*e.g.,* 2012, 2014, etc.). The new editions and addenda typically revise provisions of the Codes to broaden their applicability, add specific elements to current provisions, delete specific provisions, and/or clarify them to narrow the applicability of the provision. The revisions to the editions and addenda of the Codes do not significantly change Code philosophy or approach.

The NRC's practice is to establish requirements for the design, construction, operation, ISI (examination), and IST of nuclear power plants by approving the use of editions and addenda of the ASME BPV and OM Codes (ASME Codes) in § 50.55a. The NRC approves or mandates the use of certain parts of editions and addenda of these ASME Codes in § 50.55a through the rulemaking process of ''incorporation by reference.'' Upon incorporation by reference of the ASME Codes into § 50.55a, the provisions of the ASME Codes are legally-binding NRC requirements as delineated in § 50.55a, and subject to the conditions on certain specific ASME Codes' provisions that are set forth in § 50.55a. The editions and addenda of the ASME BPV and OM Codes were last incorporated by reference into the NRC's regulations in a final rule dated July 18, 2017 (82 FR 32934).

The ASME Codes are consensus standards developed by participants with broad and varied interests

[1] The editions and addenda of the ASME *Code for Operation and Maintenance of Nuclear Power Plants* have had different titles from 2005 to 2017 and are referred to collectively in this rule as the ''OM Code.''

[2] The 2014 Edition of the ASME OM Code was delayed and was designated the 2015 Edition. Similarly, the 2016 Edition of the OM Code was delayed and was designated the 2017 Edition.

(including the NRC and licensees of nuclear power plants). The ASME's adoption of new editions of, and addenda to, the ASME Codes does not mean that there is unanimity on every provision in the ASME Codes. There may be disagreement among the technical experts, including the NRC's representatives on the ASME Code committees and subcommittees, regarding the acceptability or desirability of a particular Code provision included in an ASME-approved Code edition or addenda. If the NRC believes that there is a significant technical or regulatory concern with a provision in an ASME-approved Code edition or addenda being considered for incorporation by reference, then the NRC conditions the use of that provision when it incorporates by reference that ASME Code edition or addenda. In some instances, the condition increases the level of safety afforded by the ASME Code provision, or addresses a regulatory issue not considered by the ASME. In other instances, where research data or experience has shown that certain Code provisions are unnecessarily conservative, the condition may provide that the Code provision need not be complied with in some or all respects. The NRC's conditions are included in § 50.55a, typically in paragraph (b) of that section. In a Staff Requirements Memorandum (SRM) dated September 10, 1999, the Commission indicated that NRC rulemakings adopting (incorporating by reference) a voluntary consensus standard must identify and justify each part of the standard that is not adopted. For this rulemaking, the provisions of the 2015 and 2017 Editions of Section III, Division 1; and the 2015 and 2017 Editions of Section XI, Division 1, of the ASME BPV Code; and the 2015 and 2017 Editions of the ASME OM Code that the NRC is not adopting, or is only partially adopting, are identified in the Discussion, Regulatory Analysis, and Backfitting and Issue Finality sections of this document. The provisions of those specific editions and code cases that are the subject of this proposed rule that the NRC finds to be conditionally acceptable, together with the applicable conditions, are also identified in the Discussion, Regulatory Analysis, and Backfitting and Issue Finality sections of this document.

The ASME Codes are voluntary consensus standards, and the NRC's incorporation by reference of these Codes is consistent with applicable requirements of the NTTAA. Additional discussion on the NRC's compliance with the NTTAA is set forth in Section VIII of this document, ''Voluntary Consensus Standards.''

## III. Discussion

The NRC follows a three-step process to determine acceptability of new provisions in new editions to the Codes and the need for conditions on the uses of these Codes. This process was employed in the review of the Codes that are the subjects of this proposed rule. First, the NRC staff actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised Codes. This includes a technical justification of each new or revised Code. Second, the NRC's committee representatives discuss the Codes and technical justifications with other cognizant NRC staff to ensure an adequate technical review. Third, the NRC position on each Code is reviewed and approved by NRC management as part of this proposed rule amending § 50.55a to incorporate by reference new editions of the ASME Codes and conditions on their use. This regulatory process, when considered together with the ASME's own process for developing and approving the ASME Codes, provides reasonable assurance that the NRC approves for use only those new and revised Code edition and addenda, with conditions as necessary, that provide reasonable assurance of adequate protection to the public health and safety, and that do not have significant adverse impacts on the environment.

The NRC reviewed changes to the Codes in the editions identified in this proposed rule. The NRC concluded, in accordance with the process for review of changes to the Codes, that these editions of the Codes, are technically adequate, consistent with current NRC regulations, and approved for use with the specified conditions upon the conclusion of the rulemaking process.

The NRC is proposing to amend its regulations to incorporate by reference:

- The 2015 and 2017 Editions to the ASME BPV Code, Section III, Division 1 and Section XI, Division 1, with conditions on their use.
- The 2015 and 2017 Editions to Division 1 of the ASME OM Code, with conditions on their use.
- ASME BPV Code Case N–729–6, ''Alternative Examination Requirements for PWR [Pressurized Water Reactor] Reactor Vessel Upper Heads With Nozzles Having Pressure-Retaining Partial-Penetration Welds Section XI, Division 1,'' ASME approval date: March 3, 2016, with conditions on its use.
- ASME BPV Code Case N–770–5, ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities, Section XI, Division 1,'' ASME approval date: November 7, 2016, with conditions on its use.
- ''Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement'' (MRP–335, Revision 3–A), EPRI approval date: November 2016.

The current regulations in § 50.55a(a)(1)(i) incorporate by reference ASME BPV Code, Section III, 1963 Edition through the 1970 Winter Addenda; and the 1971 Edition (Division 1) through the 2013 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(1)(i) through (b)(1)(ix). This proposed rule would revise § 50.55a(a)(1)(i) to incorporate by reference the 2015 and 2017 Editions (Division 1) of the ASME BPV Code, Section III.

The current regulations in § 50.55a(a)(1)(ii) incorporate by reference ASME BPV Code, Section XI, 1970 Edition through the 1976 Winter Addenda; and the 1977 Edition (Division 1) through the 2013 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (b)(2)(xxix). This proposed rule would revise § 50.55a(a)(1)(ii) to remove exclusions from the incorporation by reference of specific paragraphs of the 2011a Addenda and the 2013 Edition of ASME BPV Code, Section XI, as explained in this document. This proposed rule would also revise § 50.55a(a)(1)(ii) to incorporate by reference 2015 and 2017 Editions (Division 1) of the ASME BPV Code, Section XI. It would also clarify the wording and add, remove, or revise some of the conditions as explained in this document.

The current regulations in § 50.55a(a)(1)(iv) incorporate by reference ASME OM Code, 1995 Edition through the 2012 Edition, subject to the conditions currently identified in § 50.55a(b)(3)(i) through (b)(3)(xi). This proposed rule would revise § 50.55a(a)(1)(iv) to incorporate by reference the 2015 and 2017 Editions of Division 1 of the ASME OM Code. As a result, the NRC regulations would incorporate by reference in § 50.55a the 1995 Edition through the 2017 Edition of the ASME OM Code. In the

introduction discussion of its Codes, ASME specifies that errata to those Codes may be posted on the ASME website under the Committee Pages to provide corrections to incorrectly published items, or to correct typographical or grammatical errors in those Codes. ASME notes that an option is available to automatically receive an email notification when errata are posted to a Code. Users of the ASME BPV Code and ASME OM Code should be aware of errata when implementing the specific provisions of those Codes.

The proposed regulations in § 50.55a (a)(4) would include the Electric Power Research Institute, Materials Reliability Program, 3420 Hillview Avenue, Palo Alto, CA 94304–1338; telephone: 1–650–855–200; *http://www.epri.com,* as a new source of documentation to be incorporated by reference in § 50.55a.

Each of the proposed NRC conditions and the reasons for each proposed condition are discussed in the following sections of this document. The discussions are organized under the applicable ASME Code and Section.

*A. ASME BPV Code, Section III*

10 CFR 50.55a(a)(1)(E) Rules for Construction of Nuclear Facility Components—Division 1

The NRC proposes to revise § 50.55a(a)(1)(i)(E) to incorporate by reference the 2015 and 2017 Editions of the ASME BPV Code, Section III, including Subsection NCA and Division 1 Subsections NB through NH (for the 2015 Edition) and Subsections NB through NG (for the 2017 Edition) and Appendices. As stated in § 50.55a(a)(1)(i), the Nonmandatory Appendices are excluded and not incorporated by reference. The Mandatory Appendices are incorporated by reference because they include information necessary for Division 1. However, the Mandatory Appendices also include material that pertains to other Divisions that have not been reviewed and approved by the NRC. Although this information is included in the sections and appendices being incorporated by reference, the NRC notes that the use of Divisions other than Division 1 has not been approved, nor are they required by NRC regulations and, therefore, such information is not relevant to current applicants and licensees. Therefore, this proposed rule would clarify that current applicants and licensees may only use the sections of the Mandatory Appendices that pertain to Division 1. The NRC is not taking a position on the non-Division 1 information in the appendices and is including it in the incorporation by reference only for convenience.

10 CFR 50.55a(b)(1)(v) Section III Condition: Independence of Inspection

The 1995 Edition through the 2009b Addenda of the 2007 Edition of ASME BPV Code, Section III, Subsection NCA, endorsed the NQA–1–1994 Edition in NCA–4000, ''Quality Assurance.'' Paragraph (a) of NCA–4134.10, ''Inspection,'' states, ''The provisions of NQA–1 Basic Requirement 10 and Supplement 10S–1, shall apply, except for paragraph 3.1, and the requirements of Inservice Inspection.'' Paragraph 3.1, ''Reporting Independence,'' of Supplement 10S–1, of NQA–1, states, ''Inspection personnel shall not report directly to the immediate supervisors who are responsible for performing the work being inspected.'' In the 2010 Edition through the latest ASME BPV Code Editions of NCA, the Code removed the paragraph 3.1 exception for reporting independence.

Based on the above changes to the Code, the NRC is proposing to revise the condition to reflect that this condition is applicable only for the 1995 Edition through 2009b Addenda of the 2007 Edition, where the NQA–1–1994 Edition is referenced.

10 CFR 50.55a(b)(1)(vi) Section III Condition: Subsection NH

The NRC proposes to revise this existing condition since Subsection NH of Section III Division 1 no longer exists in the 2017 Edition of ASME BPV Code, Section III Division 1. The change is to reflect that Subsection NH existed from the 1995 Addenda through 2015 Edition of Section III Division 1. In 2015, Subsection NH contents also were included in Section III Division 5 Subpart B. In the 2017 Edition of the ASME Code, Subsection NH was deleted from Division 1 of Section III and became part of Division 5 of Section III. Division 5 of Section III is not incorporated by reference in § 50.55a. Therefore, the NRC proposes to revise the condition to make it applicable to the 1995 Addenda through all Editions and addenda up to and including the 2013 Edition.

10 CFR 50.55a(b)(1)(x) Section III Condition: Visual Examination of Bolts, Studs, and Nuts

The visual examination is one of the processes for acceptance of a bolt, stud or nut to ensure its structural integrity and its ability to perform its intended function. The 2015 Edition of the ASME Code contains this requirement, however the 2017 Edition does not require these visual examinations to be performed in accordance with NX–5100 and NX–5500. Therefore, the NRC proposes to add two conditions to ensure adequate procedures remain and qualified personnel remain capable of determining the structural integrity of these components.

10 CFR 50.55a(b)(1)(x) Section III Condition: Visual Examination of Bolts, Studs, and Nuts, First Provision

The NRC is adding § 50.55a(b)(1)(x) to condition the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, NG–2582 in the 2017 Edition of Section III. The condition is that the visual examinations are required to be performed in accordance with procedures qualified to NB–5100, NC–5100, ND–5100, NE–5100, NF–5100, and NG–5100, and personnel qualified to NB–5500, NC–5500, ND–5500, NE–5500, NF–5500, and NG–5500, respectively. The 2015 Edition of the ASME Code contains this requirement. The visual examination is one of the processes for acceptance of the final product to ensure its structural integrity and its ability to perform its intended function. The 2017 Edition does not require these visual examinations to be performed in accordance with NX–5100 and NX–5500. All other final examinations (MT, PT, UT and RT) for acceptance of the final product in the 2017 Edition require the procedures and personnel to be qualified to NX–5100 and NX–5500.

Therefore, the NRC proposes to add § 50.55a(b)(1)(x)(A) to condition the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582,and NG–2582 in the 2017 Edition of Section III to require that procedures are qualified to NB–5100, NC–5100, ND–5100, NE–5100, NF–5100, and NG–5100, and personnel are qualified to NB–5500, NC–5500, ND–5500, NE–5500, NF–5500, and NG–5500, respectively, in order to ensure adequate procedures and personnel remain capable of determining the structural integrity of these components. This is particularly important for small bolting, studs and nuts that only receive a visual examination. As stated in NX–4123 of Section III, only inspections performed in accordance with Article NX–4000 (*e.g.,* marking, dimensional measurement, fitting, alignment) are exempted from NX–5100 and NX–5500, and may be qualified in accordance with the Certificate Holder's Quality Assurance Program.

10 CFR 50.55a(b)(1)(x) Section III Condition: Visual Examination of Bolts, Studs, and Nuts, Second Provision

The 2017 Edition requires that the final surfaces of threads, shanks, and the heads be visually examined against ASTM F788, for bolting material, and ASTM F812, for nuts, for workmanship, finish, and appearance. This examination is for acceptance of the final product to ensure its structural integrity, especially for small bolting that only receives a visual examination. However, performing an inspection for workmanship or appearance to the bolting specification is not necessarily sufficient to ensure the integrity of the bolts and nuts for their intended function in a reactor. The visual examination in Section III for bolting and nuts is intended to determine structural integrity for its intended function, which may entail quality requirements more stringent than the bolting specifications. As specified in the 2015 Edition of Section III: ''discontinuities such as laps, seams, or cracks that would be detrimental to the intended service are unacceptable.''

Therefore, the NRC proposes to add § 50.55a(b)(1)(x)(B) to condition the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, and NG–2582 in the 2017 Edition of Section III, to require use of the acceptance criteria from NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, and NG–2582 in the 2015 Edition of Section III.

10 CFR 50.55a(b)(1)(xi) Section III Condition: Mandatory Appendix XXVI

The NRC proposes to add a new paragraph with conditions on the use of ASME BPV Code, Section III, Appendix XXVI for installation of high density polyethylene (HDPE) pressure piping. This Appendix is new in the 2015 Edition of Section III, and electrofusion joining was added to this Appendix in the 2017 Edition of Section III. The 2015 Edition of Section III is the first time the ASME Code has provided rules for the use of polyethylene piping. The NRC has determined that the conditions that follow in § 50.55a(b)(1)(xi)(A) through (E) are necessary in order to utilize polyethylene piping in Class 3 safety-related applications. The conditions in § 50.55a(b)(1)(xi)(A) and (B) pertain to butt fusion joints and apply to both the 2015 and 2017 Editions of Section III. The conditions in § 50.55a(b)(1)(xi)(C) through (E) pertain to electrofusion joints and apply only to the 2017 Edition of Section III.

Both NRC and industry-funded independent research programs have shown that joint failure is the most likely cause of structural failure in HDPE piping systems. Poorly manufactured joints are susceptible to early structural failure driven by ''slow crack growth,'' a form of subcritical creep crack growth that is active in HDPE. The 5 provisions below are aimed at ensuring the highest quality for joints in HDPE systems and reducing the risk of poor joint fabrication. These provisions minimize the risk of joint structural failure and the resulting potential loss of system safety function.

10 CFR 50.55a(b)(1)(xi)(A) Mandatory Appendix XXVI: First Provision

The NRC proposes to add a new paragraph (b)(1)(xi)(A), which specifies the essential variables to be used in qualifying fusing procedures for butt fusion joints in polyethylene piping installed in accordance with ASME Section III, Mandatory Appendix XXVI. The NRC does not endorse the use of a standardized fusing procedure specification. A fusion procedure specification will need to be generated for each butt fusion joint with the essential variables, as listed. The same variables will be listed for operator performance qualifications.

Per ASME BPV Code Section IX, QF–252, essential variables are those that will affect the mechanical properties of the fused joint, if changed, and require requalification of the Fusing Procedure Specification (FPS), Standard Fusing Procedure Specification (SFPS), or Manufacturer Qualified Electrofusion Procedure Specification (MEFPS) when any change exceeds the specified limits of the values recorded in the FPS for that variable. Fourteen essential variables for HDPE butt fusion joints for nuclear applications have been identified by NRC and industry experts through extensive research and field experience. Ten of these essential variables are the same as those identified in ASME BPV Code, Section IX, Table QF–254, which applies to all HDPE butt fusions and is not limited to nuclear applications. The other 4 variables deemed essential by the NRC are: Diameter, cross-sectional area, ambient temperature, and fusing machine carriage model. These 4 additional variables are recognized by industry experts as being essential for butt fusion joints in nuclear safety applications, and have been included in a proposal to list essential variables for butt fusion in the 2019 Edition of ASME BPV Code, Section III, Mandatory Appendix XXVI.

For nuclear applications, the use of HDPE is governed by ASME BPV Code, Section III, Mandatory Appendix XXVI. The NRC has determined that to ensure butt fusion joint quality is adequate for nuclear safety applications, referencing ASME BPV Code, Section IX in ASME BPV Code, Section III, Mandatory Appendix XXVI is not sufficient, because ASME BPV Code, Section IX is not incorporated into NRC regulations. Therefore, the NRC is including the essential variables for HDPE butt fusion as a condition on the use of ASME BPV Code Section III, Mandatory Appendix XXVI. This provision addresses the fact that the essential variables for HDPE butt fusion are not listed in the 2015 and 2017 Editions of ASME BPV Code, Section III, Mandatory Appendix XXVI. Proposals to incorporate these essential variables for butt fusion in the 2019 Edition of the Code have already been drafted and circulated within the ASME Code Committees. In the meantime, the NRC is proposing to add this provision to ensure butt fusion joint quality for nuclear safety applications.

10 CFR 50.55a(b)(1)(xi)(B) Mandatory Appendix XXVI: Second Provision

The NRC proposes to add a new paragraph (b)(1)(xi)(B), which will require both bend tests and high speed tensile impact testing (HSTIT) to qualify fusing procedures for joints in polyethylene piping installed in accordance with ASME BPV Code, Section III, Mandatory Appendix XXVI. The NRC requires both bend tests and HSTIT to qualify the fusion procedures. There is data that suggests that HSTIT may not distinguish between an acceptable and unacceptable HDPE butt fusion joint and, therefore, should not be considered as a stand-alone test.

The NRC has performed limited confirmatory research on the ability of short-term mechanical tests to predict the in-service behavior of HDPE butt fusion joints. Based on this research as well as research results from The Welding Institute in the UK, the NRC lacks conclusive evidence that either of the two tests proposed in XXVI–4342(d) and XXVI–4342(e) is always a reliable predictor of joint quality. As a result, the NRC has determined that the combination of both test results provides increased and sufficient indication of butt fusion joint quality. Consequently, the NRC is proposing to add a condition that requires both tests specified in in XXVI–4342(d) and XXVI–4342(e) to be performed as part of performance qualification tests, instead of only one or the other.

10 CFR 50.55a(b)(1)(xi)(C) Mandatory Appendix XXVI: Third Provision

The NRC is proposing to add a new paragraph (b)(1)(xi)(C), which specifies the essential variables to be used in

qualifying fusing procedures for electrofusion of fusion joints in polyethylene piping that is to be installed in accordance with ASME BPV Code, Section III, Mandatory Appendix XXVI. The NRC does not endorse the use of a standardized fusing procedure specification. A fusion procedure specification will need to be generated for each electrofusion joint with the essential variables as listed. The same variables will be listed for operator performance qualifications.

Per ASME BPV Code, Section IX, QF–252: ''Essential variables are those that will affect the mechanical properties of the fused joint, if changed, and require requalification of the FPS, SFPS, or MEFPS when any change exceeds the specified limits of the values recorded in the FPS for that variable.'' Sixteen essential variables for HDPE electrofusion for nuclear applications have been identified by NRC and industry experts through extensive research and field experience. Twelve of these essential variables are the same as those identified in ASME BPV Code, Section IX Table QF–255, which applies to all HDPE electrofusion and is not limited to nuclear applications. The other 4 variables deemed essential by the NRC are: fitting polyethylene material, pipe wall thickness, power supply, and processor. These 4 additional variables are recognized by industry experts as being essential for electrofusion joints in nuclear safety applications, and have been included in a proposal to list essential variables for electrofusion in the 2019 Edition of ASME BPV Code, Section III Mandatory Appendix XXVI.

For nuclear applications, the use of HDPE is governed by ASME BPV Code, Section III Mandatory Appendix XXVI. The NRC has determined that, to ensure electrofusion joint quality is adequate for nuclear safety applications, referencing ASME BPV Code, Section IX in ASME BPV Code, Section III Mandatory Appendix XXVI is not sufficient, because ASME BPV Code, Section IX is not incorporated into NRC regulations. Therefore, the NRC is including the essential variables for HDPE electrofusion as a condition on the use of ASME Section III, Mandatory Appendix XXVI. This provision addresses the fact that the essential variables for HDPE electrofusion are not listed in the 2015 and 2017 Editions of ASME BPV Code, Section III, Mandatory Appendix XXVI. Proposals to incorporate these essential variables for electrofusion in the 2019 Edition of the Code have already been drafted and circulated within the ASME Code Committees. In the meantime, the NRC proposes to add this provision to ensure electrofusion joint quality for nuclear safety applications.

10 CFR 50.55a(b)(1)(xi)(D) Mandatory Appendix XXVI: Fourth Provision

The NRC is proposing to add a new paragraph (b)(1)(xi)(D), which will require both crush tests and electrofusion bend tests to qualify fusing procedures for electrofusion joints in polyethylene piping installed in accordance with the 2017 Edition of ASME BPV Code, Section III, Mandatory Appendix XXVI. The NRC proposes to require both crush tests and electrofusion bend tests to qualify the electrofusion procedures. The operating experience data on electrofusion joints is extremely limited and also indicates some failures. In order to ensure structural integrity of electrofusion joints in safety related applications, the NRC is proposing to require that both crush tests and electrofusion bend tests be performed to demonstrate an acceptable HDPE electrofusion joint test.

Furthermore, a demonstration that the system or repair will not lose the ability to perform its safety function during its service life must be provided for systems that use electrofusion joints. The NRC lacks conclusive evidence regarding the ability of short-term mechanical tests to predict the in-service behavior of HDPE electrofusion joints in nuclear safety related applications. The NRC considers that either of the 2 tests (crush test or electrofusion bend test) proposed in XXVI–2332(a) and XXVI–2332(b), separately, may not be a reliable predictor of electrofusion joint quality. As a result, the NRC has determined that the combination of both test results provides increased and sufficient indication of electrofusion joint quality. Consequently, the NRC is proposing to add a condition that requires that both tests (crush test and electrofusion bend test) specified in in XXVI–2332(a) and XXVI–2332(b) be performed as part of performance qualification tests, instead of only one or the other.

10 CFR 50.55a(b)(1)(xi)(E) Mandatory Appendix XXVI: Fifth Provision

The NRC is proposing to add a new paragraph (b)(1)(xi)(E), which prohibits the use of electrofusion saddle fittings and electrofusion saddle joints. The NRC believes that the failure of electrofusion saddle joints can result in a gross structural rupture leading to loss of safety function for the system where such a joint is present. Consequently, only full 360° seamless sleeve electrofusion couplings (Electrofusion coupling, as shown in Table XXVI–3311–1 of the ASME BPV Code, Section III, 2017 Edition) and full 360° electrofusion socket joints (as shown in the top image in Figure XXVI–4110–2 of ASME BPV Code, Section III, 2017 Edition) are permitted.

Very limited information and operational experience is available for electrofusion joints in nuclear safety applications, and some Department of Energy operational experience indicates that failures have occurred in electrofusion joints. The NRC has determined that the failure of a saddle type electrofusion joint could result in structural separation of the electrofusion saddle coupling from the HDPE pipe it is attached to, resulting in a potential loss of flow and loss of safety function in the system. As a result, the NRC is proposing to add a condition that will only allow full 360° seamless sleeve type electrofusion couplings, attached with a socket type electrofusion joint. The failure of such a joint is far less likely to result in a total loss of flow and safety function. For full 360° seamless sleeve type electrofusion couplings attached with a socket type electrofusion joint, full separation of the coupling from the pipe is highly unlikely.

10 CFR 50.55a(b)(1)(xii) Section III Condition: Certifying Engineer

The NRC is proposing to add a new condition § 50.55a(b)(1)(xii) Section III Condition: *Certifying Engineer.* In the 2017 Edition of ASME BPV Code, Section III, Subsection NCA, the following Subsections were updated to replace the term ''registered professional engineer,'' with term ''certifying engineer'' to be consistent with ASME BPV Code Section III Mandatory Appendix XXIII.

- NCA–3255 ''Certification of the Design Specifications''
- NCA–3360 ''Certification of the Construction Specification, Design Drawings, and Design Report''
- NCA–3551.1 ''Design Report''
- NCA–3551.2 ''Load Capacity Data Sheet''
- NCA–3551.3 ''Certifying Design Report Summary'' and
- NCA–3555 ''Certification of Design Report''
- Table NCA–4134.17–2, ''Nonpermanent Quality Assurance Records''
- NCA–5125, ''Duties of Authorized Nuclear Inspector Supervisors''
- NCA–9200, ''Definitions''

The NRC reviewed these changes and has determined that the use of a certifying engineer in lieu of a registered professional engineer is only applicable

for non-U.S. nuclear facilities. Therefore, the term ''certifying engineer'' is not applicable to U.S. nuclear facilities regulated by the NRC. As a result, the NRC is proposing to add a new condition to § 50.55a (b)(1), that would not allow applicants and licensees to use a certifying engineer in lieu of a registered professional engineer for code-related activities that are applicable to U.S. nuclear facilities regulated by the NRC.

*B. ASME BPV Code, Section XI*

10 CFR 50.55a(b)(2) Conditions on ASME BPV Code, Section XI

The NRC proposes to amend the regulations in § 50.55a(b)(2) to incorporate by reference the 2015 and the 2017 Editions (Division 1) of the ASME BPV Code, Section XI. The current regulations in § 50.55a(b)(2) incorporate by reference ASME BPV Code, Section XI, 1970 Edition through the 1976 Winter Addenda; and the 1977 Edition (Division 1) through the 2013 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (b)(2)(xxix). The proposed amendment would revise the introductory text to § 50.55a(b)(2) to incorporate by reference the 2015 Edition (Division 1) and the 2017 Edition (Division 1) of the ASME BPV Code, Section XI, clarify the wording, and revise or provide some additional conditions, as explained in this document.

10 CFR 50.55a(b)(2)(vi) Effective Edition and Addenda of Subsection IWE and Subsection IWL

The NRC proposes to remove existing condition § 50.55a(b)(2)(vi). A final rule was published in the **Federal Register** (61 FR 41303) on August 8, 1996, which incorporated by reference the ASME BPV Code, Section XI, Subsection IWE and Subsection IWL for the first time. The associated statements of consideration for that rule identified the 1992 Edition with 1992 Addenda of Subsection IWE and Subsection IWL as the earliest version that the NRC found acceptable. A subsequent rule published on September 22, 1999 (64 FR 51370), included the 1995 Edition with the 1996 Addenda as an acceptable edition of the ASME BPV Code. The statements of considerations for a later rule published on September 26, 2002 (67 FR 60520), noted that the 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda of Subsection IWE and IWL must be used when implementing the initial 120-month interval for the ISI of Class MC and Class CC components, and that successive 120-month interval updates must be implemented in accordance with § 50.55a(g)(4)(ii).

This requirement was in place to expedite the initial containment examinations in accordance with Subsections IWE and IWL, which were required to be completed during the 5-year period from September 6, 1996, to September 9, 2001. Now that there is an existing framework in place for containment examinations in accordance with Subsections IWE and IWL, there is no need for a condition specific to the initial examination interval. The examinations conducted during the initial interval can be conducted in accordance with § 50.55a(g)(4).

10 CFR 50.55a(b)(2)(vii): Section XI Condition: Section XI References to OM Part 4, OM Part 6, and OM Part 10 (Table IWA–1600–1).

The NRC proposes to remove the condition found in § 50.55a(b)(2)(vii) of the current regulations. This paragraph describes the editions and addenda of the ASME OM Code to be used with the Section XI references to OM Part 4, OM Part 6, and OM Part 10 in Table IWA–1600–1 of Section XI. The condition is applicable to the ASME BPV Code, Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition. Paragraph (g)(4)(ii) requires that a licensee's successive 120-month inspection intervals comply with the requirements of the latest edition and addenda of the Code incorporated by reference in § 50.55a(b)(2). Because licensees are no longer using these older editions and addenda of the Code referenced in this paragraph, this condition can be removed.

10 CFR 50.55a(b)(2)(ix) Metal Containment Examinations

The NRC proposes to revise § 50.55a(b)(2)(ix), to require compliance with new condition § 50.55a(b)(2)(ix)(K). The proposed condition will ensure containment leak-chase channel systems are properly inspected in accordance with the applicable requirements. The NRC specifies the application of this condition to all editions and addenda of Section XI, Subsection IWE, of the ASME BPV Code, prior to the 2017 Edition, that are incorporated by reference in paragraph (b) of § 50.55a.

10 CFR 50.55a(b)(2)(ix)(K) Metal Containment Examinations

The NRC proposes to add § 50.55a(b)(2)(ix)(K) to ensure containment leak-chase channel systems are properly inspected.

Regulations in § 50.55a(g), ''Inservice Inspection Requirements,'' require that licensees implement the inservice inspection program for pressure retaining components and their integral attachments of metal containments and metallic liners of concrete containments in accordance with Subsection IWE of Section XI of the applicable edition and addenda of the ASME Code, incorporated by reference in paragraph (b) of § 50.55a and subject to the applicable conditions in paragraph (b)(2)(ix). The regulatory condition in § 50.55a(b)(2)(ix)(A) or equivalent provision in Subsection IWE of the ASME Code (2006 and later editions and addenda only) requires that licensees shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of, or result in, degradation to such inaccessible areas.

The containment floor weld leak-chase channel system forms a metal-to-metal interface with the containment shell or liner, the test connection end of which is at the containment floor level. Therefore, the leak-chase system provides a pathway for potential intrusion of moisture that could cause corrosion degradation of inaccessible embedded areas of the pressure-retaining boundary of the basemat containment shell or liner within it. In addition to protecting the test connection, the cover plates and plugs and accessible components of the leak-chase system within the access box are also intended to prevent intrusion of moisture into the access box and into the inaccessible areas of the shell/liner within the leak-chase channels, thereby protecting the shell and liner from potential corrosion degradation that could affect leak-tightness.

The containment ISI program required by § 50.55a to be implemented in accordance with Subsection IWE, of the ASME Code, Section XI, subject to regulatory conditions, requires special consideration of areas susceptible to accelerated corrosion degradation and aging, and barriers intended to prevent intrusion of moisture and water accumulation against inaccessible areas of the containment pressure-retaining metallic shell or liner. The containment floor weld leak-chase channel system is one such area subject to accelerated degradation and aging if moisture intrusion and water accumulation is allowed on the embedded shell and liner within it. Therefore, the leak-chase channel system is subject to the inservice inspection requirements of § 50.55a(g)(4).

The NRC Information Notice (IN) 2014–07, ''Degradation of Leak-Chase

Channel Systems for Floor Welds of Metal Containment Shell and Concrete Containment Metallic Liner,'' (ADAMS Accession No. ML14070A114) discusses examples of licensees that did not conduct the required inservice inspections. The IN also summarizes the NRC's basis for including the leak-chase components within the scope of Subsection IWE, of the ASME Code, Section XI, and how licensees could fulfill the requirements. The NRC guidance explains that 100 percent of the accessible components of the leak-chase system should be inspected during each inspection period. There are three inspection periods in one ten-year inspection interval.

After issuance of IN 2014–07, the NRC received feedback during a public meeting between NRC and ASME management, held on August 22, 2014 (ADAMS Accession No. ML14245A003), noting that the IN guidance appeared to be in conflict with ASME Section XI Interpretation XI–1–13–10. In response to the comment during the public meeting, the NRC issued a letter to ASME (ADAMS Accession No. ML14261A051), which stated that the NRC found the provisions in the IN to be consistent with the requirements in the ASME Code; and the NRC staff may consider adding a condition to § 50.55a to clarify the expectations. The ASME responded to the NRC's letter (ADAMS Accession No. ML15106A627) and noted that a condition in the regulations may be appropriate to clarify the NRC's position.

Based on the operating experience summarized in IN 2014–07, and the industry feedback, the NRC has determined that a new condition is necessary in § 50.55a(b)(2)(ix) to clarify the NRC's expectations and to ensure steel containment shells and liners receive appropriate examinations. In the 2017 Edition of the ASME Code, a provision was added that clearly specifies the examination of leak-chase channels. The provision requires 100 percent examination of the leak-chase channel closures over a ten-year inspection interval, as opposed to 100 percent during each inspection period. Although the examination frequency is relaxed compared to the NRC's position as identified in IN 2014–07, the NRC finds the provision in the 2017 Edition acceptable because the examination includes provisions for scope expansion and examinations of additional closures if degradation is identified within an inspection period. The NRC chose to align the condition with the acceptable provision in the latest approved edition of the ASME Code. This proposed condition would be applicable to all editions and addenda of the ASME Code prior to the 2017 Edition.

10 CFR 50.55a(b)(2)(xvii) Section XI Condition: Reconciliation of Quality Requirements

The NRC proposes to remove the condition found in the current § 50.55a(b)(2)(xvii). This paragraph describes requirements for reconciliation of quality requirements when purchasing replacement items. When licensees use the 1995 Addenda through 1998 Edition of ASME BPV Code, Section XI, this condition required replacement items to be purchased in accordance with the licensee's quality assurance program description required by 10 CFR 50.34(b)(6)(ii), in addition to the reconciliation provisions of IWA–4200. The NRC has accepted without conditions the content of IWA–4200 in versions of the Code since the 1999 Addenda of Section XI. Paragraph 50.55a(g)(4)(ii) requires that licensee's successive 120-month inspection intervals comply with the requirements of the latest edition and addenda of the Code incorporated by reference in § 50.55a(b)(2). Subsequently, licensees are no longer using these older editions and addenda of the Code referenced in this paragraph therefore this condition can be removed. Section 50.55a(b)(2)(xvii) would be designated as [Reserved].

10 CFR 50.55a(b)(2)(xviii)(D) NDE Personnel Certification: Fourth Provision

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xviii) to extend the applicability of the condition through the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section of ASME BPV Code, Section XI. This current condition prohibits those licensees which use ASME BPV Code, Section XI, 2011 Addenda through the 2013 Edition from using Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200. The condition requires licensees and applicants using these versions of Section XI to use the prerequisites for ultrasonic examination personnel certifications in Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200 in the 2010 Edition. This condition was added when the 2010 through the 2013 Edition was incorporated by reference. When ASME published the 2015 Edition and the 2017 Editions, Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200 of ASME BPV Code, Section XI were not modified in a way that would make it possible for the NRC to remove this condition. Therefore, the NRC is proposing to retain this condition to apply to the latest edition incorporated by reference in paragraph (a)(1)(ii) of § 50.55a.

10 CFR 50.55a(b)(2)(xx)(B) Section XI Condition: System Leakage Tests: Second Provision

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xx)(B) to clarify the NRC's expectations related to the nondestructive examination (NDE) required when a system leakage test is performed (in lieu of a hydrostatic test) following repair and replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda of ASME BPV Code, Section XI incorporated by reference in paragraph (a)(1)(ii) of § 50.55a. Industry stakeholders have expressed confusion on what was required by the current regulation with regard to the Code edition/addenda that the requirements for NDE and pressure testing were required to satisfy under this condition. The NRC is proposing to modify the condition to clarify that the NDE method (*e.g.,* surface, volumetric, etc.) and acceptance criteria of the 1992 or later of ASME BPV Code, Section III shall be met. The actual nondestructive examination and pressure testing may be performed using procedures and personnel meeting the requirements of the licensee's/applicant's current ISI code of record. This condition was first put in place by the NRC in a final rule, which became effective October 10, 2008 (73 FR 52730). The NRC determined the condition was necessary because the ASME BPV Code eliminated the requirement to perform the Section III NDE when performing a system leakage test in lieu of a hydrostatic test following repairs and replacement activities performed by welding or brazing on a pressure retaining boundary in the 2003 Addenda of ASME BPV Code, Section XI. When ASME published the 2015 Edition and the 2017 Editions, IWA–4520 was not modified in a way that would make it possible for the NRC to remove this condition. Therefore, the NRC is proposing to retain this condition to apply to the latest edition incorporated by reference in paragraph (a)(1)(ii) of § 50.55a.

10 CFR 50.55a(b)(2)(xx)(C) Section XI Condition: System Leakage Tests: Third Provision

The NRC proposes to add § 50.55a(b)(2)(xx)(C) to provide 2 conditions for the use of the alternative

Boiling Water Reactor (BWR) Class 1 system leakage test described in IWB–5210(c) and IWB–5221(d) of the 2017 Edition of ASME Section XI. The first condition addresses a prohibition against the production of heat through the use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the reactor coolant pressure boundary (RCPB) (sometimes referred to as nuclear heat). The second condition addresses the duration of the hold time when testing non-insulated components to allow potential leakage to manifest itself during the performance of system leakage tests.

The alternative BWR Class 1 system leakage test was intended to address concerns that performing the ASME-required pressure test for BWRs under shutdown conditions, (1) places the unit in a position of significantly reduced margin, approaching the fracture toughness limits defined in the Technical Specification Pressure-Temperature (P–T) curves, and (2) requires abnormal plant conditions/alignments, incurring additional risks and delays, while providing little added benefit beyond tests, which could be performed at slightly reduced pressures under normal plant conditions. However, due to restrictions imposed by the pressure control systems, most BWRs cannot obtain reactor pressure corresponding to 100 percent rated power during normal startup operations at low power levels that would be conducive to performing examinations for leakage. The alternative test would be performed at slightly reduced pressures and normal plant conditions, which the NRC finds will constitute an adequate leak examination and would reduce the risk associated with abnormal plant conditions and alignments.

However, the NRC has had a longstanding prohibition against the production of heat through the use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the RCPB. A letter dated February 2, 1990, from James M. Taylor, Executive Director for Operations, NRC, to Messrs. Nicholas S. Reynolds and Daniel F. Stenger, Nuclear Utility Backfitting and Reform Group (ADAMS Accession No. ML14273A002), established the NRC's position with respect to use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the RCPB. In summary, the NRC's position is that testing under these conditions involves serious impediments to careful and complete inspections and therefore creates inherent uncertainty with regard to assuring the integrity of the RCPB. Further, the practice is not consistent with basic defense-in-depth safety principles.

The NRC's position established in 1990, was reaffirmed in IN No. 98–13, ''Post-Refueling Outage Reactor Pressure Vessel Leakage Testing Before Core Criticality,'' dated April 20, 1998. The IN was issued in response to a licensee that had conducted an ASME BPV Code, Section XI, leakage test of the reactor pressure vessel (RPV) and subsequently discovered that it had violated 10 CFR part 50, appendix G, paragraph IV.A.2.d. This regulation states that pressure tests and leak tests of the reactor vessel that are required by Section XI of the ASME Code must be completed before the core is critical. The IN references NRC Inspection Report 50–254(265)–97027 (ADAMS Accession No. ML15216A276), which documents that licensee personnel performing VT–2 examinations of the drywell at one BWR plant covered 50 examination areas in 12 minutes, calling into question the adequacy of the VT–2 examinations.

The bases for the NRC's historical prohibition of pressure testing with the core critical can be summarized as follows:

1. Nuclear operation of a plant should not commence before completion of system hydrostatic and leakage testing to verify the basic integrity of the RCPB, a principal defense-in-depth barrier to the accidental release of fission products. In accordance with the defense-in-depth safety precept, the nuclear power plant design provides for multiple barriers to the accidental release of fission products from the reactor.

2. Hydrotesting must be done essentially water solid (*i.e.,* free of pockets of air, steam or other gases) so that stored energy in the reactor coolant is minimized during a hydrotest or leaktest.

3. The elevated reactor coolant temperatures, associated with critical operation, result in a severely uncomfortable and difficult working environment in plant spaces where the system leakage inspections must be conducted. The greatly increased stored energy in the reactor coolant, when the reactor is critical, increases the hazard to personnel and equipment in the event of a leak. As a result, the ability for plant workers to perform a comprehensive and careful inspection becomes greatly diminished.

However, the NRC has determined that pressure testing with the core critical is acceptable under the following conditions: When performed after repairs of a limited scope; where only a few locations or a limited area needs to be examined; and when ASME Code Section XI, Table IWB–2500–1, Category B–P (the pressure test required once per cycle of the entire RCPB) has been recently performed verifying the integrity of the overall RCPB. The NRC also notes the alternative BWR Class 1 system leakage test does not allow for the use of the alternative test pressure following repairs/replacements on the RPV; therefore, it does not violate 10 CFR part 50, appendix G. The NRC has determined that the risk associated with nuclear heat at low power is comparable with the risk to the plant, when the test is performed without nuclear heat (with the core subcritical) during mid-cycle outages, when decay heat must be managed. Performing the pressure test under shutdown conditions at full operating pressure without nuclear heat requires securing certain key pressure control, heat removal, and safety systems. It is more difficult to control temperature and pressure when there is significant production of decay heat (*e.g.,* after a mid-cycle outage), and may reduce the margin available to prevent exceeding the plant pressure-temperature limits.

When the pressure test is conducted using nuclear heat, the scope of repairs should be relatively small in order to minimize the personnel safety risk and to avoid rushed examinations. The alternative BWR Class 1 system leakage test does not place any restrictions on the size or scope of the repairs for which the alternative may be used, provided the alternative test pressure is not used to satisfy pressure test requirements following repair/replacement activities on the reactor vessel. It is impractical to specify a particular number of welded or mechanical repairs that would constitute a ''limited scope.'' However, if the plant is still in a refueling outage and has already performed the ASME Section XI Category B–P pressure test of the entire RCPB, it is likely that subsequent repairs would be performed only on an emergent basis, and would generally be of a limited scope. Additionally, the overall integrity of the RCPB will have been recently confirmed via the Category B–P test. For mid-cycle maintenance outages, the first condition allows the use of nuclear heat to perform the test, if the outage duration is 14 days or less. This would tend to limit the scope of repairs, and also limit the use of the code case to outages where there is a significant production of decay heat. Therefore, the first condition on the alternative BWR Class 1 system leakage test states: ''The use of nuclear heat to conduct the BWR Class 1 system leakage test is prohibited (*i.e.*

the reactor must be in a non-critical state), except during refueling outages in which the ASME Section XI Category B–P pressure test has already been performed, or at the end of mid-cycle maintenance outages fourteen (14) days or less in duration.''

With respect to the second condition and adequate pressure test hold time, the technical analysis supporting the alternative BWR Class 1 system leakage test indicates that the lower test pressure provides more than 90 percent of the flow that would result from the pressure corresponding to 100 percent power. However, a reduced pressure means a lower leakage rate, so additional time is required in order for there to be sufficient leakage to be observed by inspection personnel. Section XI, paragraph IWA–5213, ''Test Condition Holding Time,'' does not require a holding time for Class 1 components, once test pressure is obtained. To account for the reduced pressure, the alternative BWR Class 1 system leakage test would require a 15-minute hold time for non-insulated components. The NRC has determined that 15 minutes does not allow for an adequate examination because it is not possible to predict the entire range of scenarios or types of defects that could result in leakage. Some types of defects could result in immediate leakage, such as an improperly torqued bolted connection; however other types of defects, such as weld defects or tight cracks, could present a more torturous path for leakage and result in delayed leakage. Due to the uncertainty in the amount of time required for leakage to occur to an extent that it would be readily detectable by visual examination, the NRC has determined that it is appropriate to conservatively specify a longer hold time of 1 hour for non-insulated components. Therefore, the second condition for the alternative BWR Class 1 system leakage test would require a one hour hold time for non-insulated components.

10 CFR 50.55a(b)(2)(xxi) Section XI Condition: Table IWB–2500–1 Examination Requirements

The NRC proposes to remove the condition found in § 50.55a(b)(2)(xxi)(A) to allow licensees to use the current editions of ASME BPV Code, Section XI, Table IWB 2500–1, Examination Category B–D, Full Penetration Welded Nozzles in Vessels, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B). These inspection categories concern pressurizer and steam generator nozzle inner radius section examinations. Previously, the condition required licensees to use the 1998 Edition, which required examination of the nozzle inner radius when using the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of § 50.55a. As these inspection requirements were removed in the ASME BPV Code in 1999, this change would effectively eliminate the requirement to examine the nozzle inner radii in steam generators and pressurizers.

The requirements for examinations of inner nozzle radii in several components were developed in the ASME BPV Code in reaction to the discovery of thermal fatigue cracks in the inner-radius section of boiling water reactor feedwater nozzles in the late 1970's and early 1980's. As described in NUREG/CR–7153, ''Expanded Materials Degradation Assessment (EMDA),'' (ADAMS Accession Nos. ML14279A321, ML14279A461, ML14279A349, ML14279A430, and ML14279A331), and NUREG–0619–Rev–1, ''BWR Feedwater Nozzle and Control Rod Drive Return Line Nozzle Cracking: Resolution of Generic Technical Activity A–10 (Technical Report),'' (ADAMS Accession No. ML031600712), the service-induced flaws that have been observed are cracks at feedwater nozzles associated with mixing of lower-temperature water with hot water in a BWR vessel with rare instances of underclad and shallow cladding cracking appearing in pressurized water reactor (PWR) nozzles. Feedwater nozzle inner radius cracking has not been detected since the plants changed operation of the low flow feedwater controller. Significant inspections and repairs were required in the late 1970s and early 1980s to address these problems. The redesign of safe end/thermal sleeve configurations and feedwater spargers, coupled with changes in operating procedures, has been effective to date. No further occurrences of nozzle fatigue cracking have been reported for PWRs or BWRs.

When the new designs and operating procedures appeared to have mitigated the nozzle inner radius cracking, the ASME BPV Code, Section XI requirements to inspect steam generator and pressurizer nozzle inner radii were removed in the 1999 Addenda of ASME BPV Code, Section XI. Since the NRC imposed the condition requiring that these areas be inspected in 2002, no new cracking has been identified in steam generator or pressurizer nozzle inner radii. The NRC finds that the complete absence of cracking since the operational change provides reasonable assurance that the observed cracking was the result of operational practices that have been discontinued. Because the inner radius inspections were instituted solely based on the observed cracking and since the cracking mechanism has now been resolved through changes in operation, the NRC finds that the intended purpose of the steam generator and pressurizer inner radius exams no longer exists and that the exams can be discontinued.

In addition to operating experience, the NRC has reviewed the nozzle inner radii examinations as part of approving alternatives and granting relief requests concerning inspections of the pressurizer and steam generator nozzle inner radii. In the safety evaluations for proposed alternatives, the NRC has concluded that the fatigue analysis for a variety of plants shows that there is reasonable assurance that there will not be significant cracking at the steam generator or pressurizer nozzle inner radii before the end of the operating licenses of the nuclear power plants.

Therefore, based on the design changes, operating experiences, and analysis done by industry and the NRC, the NRC proposes to remove § 55.55a(b)(2)(xxi)(A), which requires the inspection of pressurizer and steam generator nozzle inner radii.

10 CFR 50.55a(b)(2)(xxi)(B) Section XI Condition: Table IWB–2500–1 Examination Requirements

The NRC is proposing to add a new paragraph (b)(2)(xxi)(B) that will place conditions on the use of the provisions of IWB–2500(f) and (g) and Notes 6 and 7 of Table IWB–2500–1 of the 2017 Edition of ASME BPV Code, Section XI. These provisions would allow licensees of BWRs to reduce the number of Item Number B3.90 and B3.100 components to be examined from 100 percent to 25 percent. These conditions would require licensees using the provisions of IWB–2500(f) to maintain the evaluations that determined the plant satisfied the criteria of IWB–2500(f) as records in accordance with IWA–1400. The conditions would prohibit use of a new provision in Section XI, 2017 Edition, Table 2500–1 Category B–D, Full Penetration Welded Nozzles in Vessels, Items B3.90 and B3.100, specific to BWR nuclear power plants with renewed operating licenses or renewed combined licensees in accordance with 10 CFR part 54. The final condition would not allow the use of these provisions to eliminate preservice or inservice volumetric examinations of plants with a Combined Operating License pursuant to 10 CFR part 52, or a plant that receives its operating license after October 22, 2015.

The addition of these provisions addresses the incorporation of Code Case N–702, ''Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds Section XI, Division 1 into the Code. The proposed conditions are consistent with those proposed for Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 19.

The NRC finds that eliminating the volumetric preservice or inservice examination, as would be allowed by implementing the provisions of IWB–2500(g) and Note 7 of Table IWB–2500–1, should be predicated on good operating experience for the existing fleet, which has not found any inner radius cracking in the nozzles within scope of the code case. New reactor designs do not have any operating experience; therefore, the proposed condition will ensure that new reactors would perform volumetric examinations of nozzle inner radii to gather operating experience.

10 CFR 50.55a(b)(2)(xxv) Section XI Condition: Mitigation of Defects by Modification

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xxv) to allow the use of IWA–4340 of ASME BPV Code, Section XI, 2011 Addenda through 2017 Edition with conditions. The modification of § 50.55a(b)(2)(xxv) would add paragraph (A) and would continue the prohibition of IWA–4340 for Section XI editions and addenda prior to the 2011 Addenda. It would also add paragraph (B), which would contain the three conditions that the NRC is proposing to place on the use of IWA–4340 of Section XI, 2011 Addenda through 2017 Edition.

10 CFR 50.55a(b)(2)(xxv)(A) Mitigation of Defects by Modification: First Provision

The NRC proposes to add paragraph (b)(2)(xxv)(A), which would continue the prohibition of IWA–4340 for Section XI editions and addenda prior to the 2011 Addenda. IWA–4340 as originally incorporated into Section XI, Subsubarticle IWA–4340 did not include critical requirements that were incorporated into later editions of Section XI such as: (a) Characterization of the cause and projected growth of the defect; (b) verification that the flaw is not propagating into material credited for structural integrity; (c) prohibition of repeated modifications where a defect area grew into the material required for the modification; and (d) pressure testing. Therefore, the NRC prohibited the use of IWA–4340 in its original form. This new paragraph would be necessary to maintain the prohibition because the NRC, as described in the following paragraph, is proposing to allow the use of IWA–4340 of Section XI, 2011 Addenda through 2017 Edition.

10 CFR 50.55a(b)(2)(xxv)(B) Mitigation of Defects by Modification: Second Provision

The NRC proposes to add paragraph (b)(2)(xxv)(B) to allow the use of IWA–4340 of Section XI, 2011 Addenda through 2017 Edition with three conditions. The NRC finds that IWA–4340 as incorporated into later editions of Section XI was improved with requirements such as: (a) Characterization of the cause and projected growth of the defect; (b) verification that the flaw is not propagating into material credited for structural integrity; (c) prohibition of repeated modifications where a defect area grew into the material required for the modification; and (d) pressure testing. With inclusion of these requirements and those stated in the following conditions, the NRC concludes that there are appropriate requirements in place to provide reasonable assurance that the modification will provide an adequate pressure boundary, even while considering potential growth of the defect. The conditions and the basis for each are as follows:

- The first proposed condition would prohibit the use of IWA–4340 on crack-like defects or those associated with flow accelerated corrosion. The design requirements and potentially the periodicity of follow-up inspections might not be adequate for crack-like defects that could propagate much faster than defects due to loss of material. Therefore, the NRC proposes to prohibit the use of IWA–4340 on crack-like defects. Loss of material due to flow accelerated corrosion is managed by licensee programs based on industry standards. The periodicity of follow-up inspections is best managed by plant-specific flow accelerated corrosion programs. In addition, subparagraph IWA–4421(c)(2) provides provisions for restoring minimum required wall thickness by welding or brazing, including loss of material due to flow accelerated corrosion.
- The second proposed condition would require the design of a modification that mitigates a defect to incorporate a loss of material rate either 2 times the actual measured corrosion rate in the location, or 4 times the estimated maximum corrosion rate for the piping system. Corrosion rates are influenced by local conditions (*e.g.,* flow rate, discontinuities). The condition to extrapolate a loss of material rate either 2 times the actual measured corrosion rate in the location, or 4 times the estimated maximum corrosion rate for the system is consistent with ASME Code Cases N–786–1, ''Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping,'' and N–789, ''Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service.'' The NRC concludes that these multipliers are appropriate if the wall thickness measurements in the vicinity of the defect were only obtained once. In contrast, if wall thickness measurements were obtained in two or more refueling outage cycles, the NRC concludes that there is a sufficient span of time to be able to trend the corrosion rate into the future. This conclusion is based in part on the follow-up wall thickness measurements that are conducted subsequent to installation of the modification.
- The third proposed condition would require the Owner to perform a wall thickness examination in the vicinity of the modification and relevant pipe base metal during each refueling outage cycle to detect propagation of the flaw into the material credited for structural integrity of the item, unless the examinations in the two refueling outage cycles subsequent to the installation of the modification are capable of validating the projected flaw growth. The NRC concludes that the provision allowed by subparagraph IWA–4340(g) to conduct follow-up wall thickness measurements only to the extent that they demonstrate that the defect has not propagated into the material credited for structural integrity is not sufficient because it does not provide a verification of the projected flaw growth. Subparagraph IWA–4340(h) does not fully address the NRC's concern because it allows for projected flaw growth to be based on ''prior Owner or industry experiences with the same conditions'' instead of specific measurements in the location of the modification. The proposed condition allows for only conducting examinations in the two refueling outages subsequent to the installation of the modification, consistent with subparagraph IWA–4340(g), if the measurements are capable of projecting the flaw growth.

10 CFR 50.55a(b)(2)(xxvi) Section XI Condition: Pressure Testing Class 1, 2 and 3 Mechanical Joints

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xxvi) to clarify the NRC's expectations related to the pressure testing of ASME BPV Code Class 1, 2, and 3 mechanical joints disassembled and reassembled during the performance of an ASME BPV Code, Section XI activity. Industry stakeholders have expressed confusion with the current regulatory requirements with regard to when a pressure test was required and which year of the Code the pressure testing should be in compliance with in accordance with this condition. The NRC proposes to modify the condition to clarify that all mechanical joints in Class 1, 2 and 3 piping and components greater than NPS–1 that are disassembled and reassembled during the performance of a Section XI activity (*e.g.,* a repair/replacement activity) shall be pressure tested in accordance with IWA–5211(a). The pressure testing shall be performed using procedures and personnel meeting the requirements of the licensee's/applicant's current code of record. This condition was first put in place by the NRC in the final rule effective November 1, 2004 (69 FR 58804). The NRC determined that the condition was necessary because the ASME BPV Code eliminated the requirements to pressure test Class 1, 2, and 3 mechanical joints undergoing repair and replacement activities in the 1999 Addenda. The NRC finds that pressure testing of mechanical joints affected by repair and replacement activities is necessary to ensure and verify the leak tight integrity of the system pressure boundary.

10 CFR 50.55a(b)(2)(xxxii) Section XI Condition: Summary Report Submittal

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xxxii) to address the use of Owner Activity Reports. Through the 2013 Edition of ASME BPV Code, Section XI, Owners were required to prepare Summary Reports of preservice and inservice examinations and repair replacement activities. This condition was added when the 2013 Edition was incorporated by reference because up until that time, Owners were required to submit these reports to the regulatory authority having jurisdiction of the plant site. The 2013 Edition removed the requirement for submittal from IWA–6240(c), to state that submittal was only mandatory if required by the authority. The NRC added the condition in paragraph (b)(2)(xxxii) to require submittal of Summary Reports. In the 2015 Edition of ASME BPV Code, Section XI the title of these reports was changed from Summary Reports to Owner Activity Reports. Therefore, the NRC is proposing to amend the condition to also require the submittal of Owner Activity Reports.

10 CFR 50.55a(b)(2)(xxxiv) Section XI Condition: Nonmandatory Appendix U

The NRC proposes to amend the requirements in current paragraph (b)(2)(xxxiv) to make the condition applicable to the latest edition incorporated by reference in paragraph (a)(1)(ii) of § 50.55a. The current condition in paragraph (b)(2)(xxxiv)(A) requires repair and replacement activities temporarily deferred under the provisions of Nonmandatory Appendix U to be performed during the next scheduled refueling outage. This condition was added when the 2013 Edition was incorporated by reference. When ASME published the 2015 Edition and the 2017 Editions, Nonmandatory Appendix U was not modified in a way that would make it possible for the NRC to remove this condition. Therefore, the NRC is proposing to retain this condition to apply to the latest edition incorporated by reference in paragraph (a)(1)(ii) of § 50.55a. The current condition in paragraph (b)(2)(xxxiv)(B) requires a mandatory appendix in ASME Code Case N–513–3 to be used as the referenced appendix for paragraph U–S1–4.2.1(c). This condition was also added when the 2013 Edition was incorporated by reference. The omission that made this condition necessary was remedied in the 2017 Edition. Therefore, the NRC is proposing to retain this condition to apply to only to the 2013 and the 2015 Editions.

10 CFR 50.55a(b)(2)(xxxv) Section XI Condition: Use of $RT_{T0}$ in the $K_{Ia}$ and $K_{Ic}$ Equations

The NRC proposes to re-designate the requirements in current paragraph (b)(2)(xxxv), that address the use of the 2013 Edition of ASME BPV Code, Section XI, Appendix A, paragraph A–4200, as (b)(2)(xxxv)(A). The ASME BPV Code has addressed the NRC concern related to this condition in the 2015 Edition; however, it is still relevant to licensees/applicants using the 2013 Edition. The NRC proposes to add a new paragraph (b)(2)(xxv)(B) to condition the use of 2015 Edition of ASME BPV Code, Section XI, Appendix A, paragraph A–4200(c), to require the use of the equation $RT_{KIa} = T0 + 90.267 \exp(-0.003406T0)$ in lieu of the equation (a), shown in the Code. Paragraph A–4200(c) was added in the 2015 Edition to provide for an alternative method in establishing a fracture-toughness-based reference temperature, $RT_{T0}$, for pressure retaining materials, using fracture toughness test data. Equation (b) was derived from test data using the International System of Units (SI units). Equation (a) was a converted version of equation (b) using U.S Customary units. Unfortunately, an error was made in the conversion, which makes equation (a) incorrect. The equation shown in this paragraph for $RT_{KIa}$ is the correct formula.

10 CFR 50.55a(b)(2)(xxxvi) Section XI Condition: Fracture Toughness of Irradiated Materials

The NRC proposes to amend the condition found in § 50.55a(b)(2)(xxxvi) to extend the applicability to use of the 2015 and 2017 Editions of ASME BPV Code, Section XI. This current condition requires licensees using ASME BPV Code, Section XI, 2013 Edition, Appendix A, paragraph A–4400, to obtain NRC approval before using irradiated $T_0$ and the associated $RT_{T0}$ in establishing fracture toughness of irradiated materials. This condition was added when the 2013 Edition was incorporated by reference because the newly introduced A–4200(b) could mislead the users of Appendix A into adopting methodology that is not accepted by the NRC. When ASME published the 2015 Edition and the 2017 Editions, Appendix A of the ASME BPV Code, Section XI was not modified in a way that would make it possible for the NRC to remove this condition. Therefore, the NRC is proposing to retain this condition to apply to the 2015 and 2017 Editions.

10 CFR 50.55a(b)(2)(xxxviii) Section XI Condition: ASME Code Section XI Appendix III Supplement 2

The NRC proposes to add § 50.55a(b)(2)(xxxviii) to condition ASME BPV Code, Section XI Appendix III Supplement 2. Supplement 2 is closely-based on ASME Code Case N–824, which was incorporated by reference with conditions in § 50.55a(b)(2)(xxxvii). The conditions on ASME BPV Code, Section XI Appendix III Supplement 2 are consistent with the conditions on ASME Code Case N–824, published in July 18, 2017 (82 FR 32934).

The conditions are derived from research into methods for inspecting Cast Austenitic Stainless Steel (CASS) components; these methods are published in NUREG/CR–6933, ''Assessment of Crack Detection in

Heavy-Walled Cast Stainless Steel Piping Welds Using Advanced Low-Frequency Ultrasonic Methods,'' (ADAMS Accession Nos. ML071020410 and ML071020414), and NUREG/CR–7122, ''An Evaluation of Ultrasonic Phased Array Testing for Cast Austenitic Stainless Steel Pressurizer Surge Line Piping Welds,'' (ADAMS Accession No. ML12087A004). These NUREG/CR reports show that CASS materials less than 1.6 inches thick can be reliably inspected for flaws 10 percent through-wall or deeper if encoded phased-array examinations are performed using low ultrasonic frequencies and a sufficient number of inspection angles. Additionally, for thicker welds, flaws greater than 30 percent through-wall in depth can be detected using low frequency encoded phased-array ultrasonic inspections.

The NRC, using NUREG/CR–6933 and NUREG/CR–7122, has determined that sufficient technical basis exists to condition ASME BPV Code, Section XI, Appendix III Supplement 2. The NUREG/CR reports show that CASS materials produce high levels of coherent noise and that the noise signals can be confusing and mask flaw indications. The optimum inspection frequencies for examining CASS components of various thicknesses as described in NUREG/CR–6933 and NUREG/CR–7122 are reflected in proposed condition § 50.55a(b)(2)(xxxviii)(A). As NUREG/CR–6933 shows that the grain structure of CASS can reduce the effectiveness of some inspection angles, the NRC finds sufficient technical basis for the use of ultrasound using angles including, but not limited to, 30 to 55 degrees, with a maximum increment of 5 degrees. This is reflected in proposed condition § 50.55a(b)(2)(xxxviii)(B).

10 CFR 50.55a(b)(2)(xxxix)(A) Defect Removal: First Provision

The NRC proposes to add § 50.55a(b)(2)(xxxix)(A) to place conditions on the use of ASME BPV Code, Section XI, IWA–4421(c)(1). The condition establishes that the final configuration of the item will be in accordance with the original Construction Code, later editions and addenda of the Construction Code, or a later different Construction Code, as well as meeting the Owner's Requirements or revised Owner's Requirements. This condition would ensure that welding, brazing, fabrication, and installation requirements, as well as design requirements for material, design or configuration changes, are consistent with the Construction Code and Owner's Requirements. This condition retains the intent of the revision to Section XI that: (a) Replacements in kind are acceptable; (b) replacements with alternative configurations are acceptable as long as Construction Code and Owner's Requirements are met; and (c) defect removal is required; however, this can be accomplished by replacing all or a portion of the item containing the defect.

10 CFR 50.55a(b)(2)(xxxix)(B) Defect Removal: Second Provision

The NRC proposes to add § 50.55a(b)(2)(xxxix)(B) to place conditions on the use of ASME BPV Code, Section XI, IWA–4421(c)(2). The inclusion of subparagraph IWA–4421(c)(2) is intended to address wall thickness degradation where the missing wall thickness is restored by weld metal deposition. This repair activity restores the wall thickness to an acceptable condition; however, it does not ''remove'' the degraded wall thickness (*i.e.,* the defect); rather, restoration of wall thickness by welding or brazing mitigates the need to remove the defect. However, increasing the wall thickness of an item to reclassify a crack from a defect to a flaw [3] is not acceptable because there are no provisions in subparagraph IWA–4421(c)(2) for analyses and ongoing monitoring of potential crack growth. Therefore, this proposed condition would prohibit the use of subparagraph IWA–4421(c)(2) rather than replacement for crack-like defects.

10 CFR 50.55a(b)(2)(xl) Section XI Condition: Prohibitions on Use of IWB–3510.4(b)

The NRC proposes to add § 50.55a(b)(2)(xl) to prohibit the use of ASME BPV Code, Section XI, Subparagraphs IWB–3510.4(b)(4) and IWB–3510.4(b)(5), which allow use of certain acceptance standard tables for high yield strength ferritic materials because they are not supported by the fracture toughness data.

The ASME BPV Code, Section XI, Subarticle IWB–3500 provides acceptance standards for pressure retaining components made of ferritic steels. Subparagraph IWB–3510.4 specifies material requirements for ferritic steels for application of the acceptance standards. In prior editions of the ASME BPV Code, Section XI, the material requirements for ferritic steels for which the acceptance standards of IWB–3500 apply are included in a note under the title of tables that specify allowable flaw sizes (*e.g.,* Table IWB–3510–1 ''Allowable Planar Flaws''). Subparagraph IWB–3510.4 separates ferritic materials into three groups: (a) Those with a minimum yield strength of 50 ksi or less, (b) five ferritic steels with these material designations: SA–508 Grade 2 Class 2 (former designation: SA–508 Class 2a), SA–508 Grade 3 Class 2 (former designation: SA–508 Class 3a), SA–533 Type A Class 2 (former designation: SA–533 Grade A Class 2), SA–533 Type B Class 2 (former designation: SA–533 Grade B Class 2), and SA–508 Class 1, and (c) those with greater than 50 ksi but not exceeding 90 ksi. The material requirements for ferritic steels with a minimum yield strength of 50 ksi or less and those with greater than 50 ksi but not exceeding 90 ksi are explicitly specified. However, there are no material requirements for the five ferritic steels identified above.

The NRC finds Subparagraph IWB–3510.4(a) acceptable because it is consistent with the current material requirements for ferritic steels having a minimum yield strength of 50 ksi or less. The NRC finds Subparagraph IWB–3510.4(c) acceptable because it is consistent with the current material requirements for ferritic steels having a minimum yield strength of greater than 50 ksi to 90 ksi.

The NRC does not find Subparagraphs IWB–3510.4(b)(4) and (5) acceptable for the following reasons. The NRC plotted the ASME BPV Code, Section XI static plain-strain fracture toughness ($K_{IC}$) curve in relevant figures in an ASME conference paper, PVP2010–25214, ''Fracture Toughness of Pressure Boundary Steels with Higher Yield Strength'' that shows dynamic fracture toughness ($K_{ID}$) data for materials listed in IWB–3510.4 (b)(1) to IWB–3510.4 (b)(4). The NRC confirmed that the materials listed in IWB–3510.4 (b)(1) and IWB–3510.4 (b)(3) are acceptable because the data are above the $K_{IC}$ curve with adequate margin to compensate for the limited data size. Additionally, the NRC has approved the use of the materials listed in IWB–3510.4 (b)(1) and IWB–3510.4 (b)(3) in a licensing and a design certification application. For the material listed in IWB–3510.4 (b)(2), $K_{ID}$ data was demonstrated to be above the crack arrest fracture toughness ($K_{Ia}$). The NRC has previously determined the $K_{Ia}$ fracture toughness standard to be acceptable. Hence, the materials listed in IWB–3510.4 (b)(2) are acceptable. However, the technical basis document does not provide sufficient data to support exclusion of the fracture

[3] As defined in ASME BPV Code, Section XI, Article IWA–9000, a ''flaw'' is as an imperfection or unintentional discontinuity that is detectable by nondestructive examination and a ''defect'' is defined as a flaw of such size, shape, orientation, location, or properties as to be rejectable.

toughness requirements for the materials specified in Subparagraphs IWB–3510.4(b)(4) and IWB–3510.4(b)(5).

This proposed condition does not change the current material requirements because licensees/applicants may continue to use testing to show that the two prohibited materials meet the material requirements.

10 CFR 50.55a(b)(2)(xli) Section XI Condition: Preservice Volumetric and Surface Examinations Acceptance

The NRC proposes to add § 50.55a(b)(2)(xli) to prohibit the use of ASME BPV Code, Section XI, Subparagraphs IWB–3112(a)(3) and IWC–3112(a)(3) in the 2013 through 2017 Edition. The NRC is prohibiting these items consistent with a final rule that approved ASME BPV Code Cases for use, dated January 17, 2018, (83 FR 2331).

During the review of public comments that were submitted on the proposed rule, dated March 2, 2016, (81 FR 10780), the NRC identified inconsistencies between Regulatory Guide 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 5, and a then concurrent proposed rule to incorporate by reference the 2009–2013 Editions of the ASME BPV Code (80 FR 56819), dated December 2, 2015.

Specifically, conditions that pertain to the staff's disapproval of Code Case N–813, ''Alternative Requirements for Preservice Volumetric and Surface Examination,'' in the ASME BPV Code Regulatory Guide 1.193 proposed rule were not included in the ASME BPV 2009–2013 Editions proposed rule; however, the content of Code Case N–813 had been incorporated in the 2013 Edition of the ASME Code, Section XI. In order to resolve this conflict, the NRC excluded from the incorporation by reference those applicable portions of Section IX in the 2011a Addenda and the 2013 Edition, in § 50.55a(a)(1)(ii)(C)(52) and (53) respectively. This allowed the NRC to develop an appropriate regulatory approach for the treatment of these provisions that is consistent with the ASME BPV Code Regulatory Guide 1.193 rulemaking, in which the NRC found the acceptance of preservice flaws by analytical evaluation unacceptable.

Code Case N–813 is a proposed alternative to the provisions of the 2010 Edition of the ASME Code, Section XI, paragraph IWB–3112. Paragraph IWB–3112 does not allow the acceptance of flaws detected in the preservice examination by analytical evaluation. Code Case N–813 would allow the acceptance of these flaws through analytical evaluation. Per paragraph IWB–3112, any preservice flaw that exceeds the acceptance standards of Table IWB–3410–1 must be removed. While it is recognized that operating experience has shown that large through-wall flaws and leakages have developed in previously repaired welds as a result of weld residual stresses, the NRC has the following concerns regarding the proposed alternative in Code Case N–813:

(1) The requirements of paragraph IWB–3112 were developed to ensure that defective welds were not placed in service. The NRC finds that a preservice flaw detected in a weld that exceeds the acceptance standards of Table IWB–3410–1 demonstrates poor workmanship and/or inadequate welding practice and procedures. The NRC finds that such an unacceptable preservice flaw needs to be removed and the weld needs to be repaired before it is placed in service.

(2) Under Code Case N–813, large flaws would be allowed to remain in service because paragraph IWB–3132.3, via paragraph IWB–3643, allows a flaw up to 75 percent through-wall to remain in service. The NRC finds that larger flaws could grow to an unacceptable size between inspections, reducing structural margin and potentially challenging the structural integrity of safety-related Class 1 and Class 2 piping.

Paragraph C–3112(a)(3) of Code Case N–813, provides the same alternatives for Class 2 piping as that of Paragraph B–3122(a)(3). The NRC has the same concerns for Class 2 piping as for Class 1 piping.

Therefore, for the acceptance of preservice flaws by analytical evaluation, the NRC proposes to add a condition that prohibits the use of IWB–3112(a)(3) and IWC–3112(a)(3) in the 2013 Edition of ASME BPV Code Section XI through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of § 50.55a.

10 CFR 50.55a(b)(2)(xlii) Section XI Condition: Steam Generator Nozzle-to-Component Welds and Reactor Vessel Nozzle-to-Component Welds

The NRC proposes to add § 50.55a(b)(2)(xlii) to require that the examination of Steam Generator Nozzle-to-Component welds and Reactor Vessel Nozzle-to-Component welds must be a full volume examination and that the ultrasonic examination procedures, equipment, and personnel must be qualified by performance demonstration in accordance with Mandatory Appendix VIII of ASME Code, Section XI. These proposed conditions are consistent with the conditions on ASME Code Case N–799 in Regulatory Guide 1.147, Revision 18, which was incorporated by reference in § 50.55a in the final rule that approved ASME BPV Code Cases for use, dated January 17, 2018 (83 FR 2331). The NRC is adding this condition in order to be consistent with that final rule.

During the review of the public comments that were submitted on the proposed rule, dated March 2, 2016, (81 FR 10780), the NRC identified inconsistencies between Regulatory Guide 1.147, and a then concurrent proposed rule to incorporate by reference the 2009–2013 Editions of the ASME BPV Code (80 FR 56819), dated December 2, 2015.

Specifically, conditions that pertain to Code Case N–799, ''Dissimilar Metal Welds Joining Vessel Nozzles to Components,'' in the ASME BPV Code Regulatory Guide 1.147 proposed rule were not included in the ASME BPV 2009–2013 Editions proposed rule. However, the content of Code Case N–799 had been incorporated in the 2013 Edition of the ASME Code, Section XI. In order to resolve this conflict, the NRC excluded from the incorporation by reference those applicable portions of Section IX in the 2011a Addenda and the 2013 Edition, in § 50.55a(a)(1)(ii)(C)(52) and (53), respectively. This allowed the NRC to develop an appropriate regulatory approach for the treatment of these provisions that is consistent with the ASME BPV Code Regulatory Guide 1.147 final rule, in which the NRC required that the examination of the aforementioned welds must be full volume and that the ultrasonic examination procedures, equipment, and personnel must be qualified by performance demonstration in accordance with Mandatory Appendix VIII of ASME Code, Section XI.

Of particular interest to the NRC is the condition requiring the examination of dissimilar metal welds between vessel nozzles and components to be full volume and the condition for requiring performance demonstration in accordance with Mandatory Appendix VIII of ASME Code, Section XI. The following focuses on the AP1000 design, although a similar issue exists for the reactor vessel-to-reactor coolant pump connection for the Advanced Boiling Water Reactor (ABWR) design.

The AP1000 design is unique in that a reactor coolant pump is welded directly to each of the two outlet nozzles on the steam generator channel head. This steam generator nozzle to reactor coolant pump casing (SG-to-RCP) weld is a dissimilar metal (low alloy steel to

cast austenitic stainless steel with Alloy 52/152 weld metal) circumferential butt weld with a double sided weld joint configuration similar to that of a reactor vessel shell weld. Also, this unique component-to-component weld is part of the reactor coolant pressure boundary and therefore subject to the examination requirements of ASME Section XI, Subsection IWB. However, prior to the development of Code Case N–799 (since incorporated into ASME Section XI, IWB–2500, as part of the 2011 Addenda), the examination requirements for the SG-to-RCP welds were not addressed in the ASME Code.

The NRC's first concern is that the examinations required by Code Case N–799 do not provide assurance that the integrity of the SG-to-RCP welds will be maintained throughout the operating life of the AP1000 plant. Traditionally, ASME Section XI, IWB–2500 requires a full volume examination of all component welds, except those welds found in piping and those found in nozzles welded to piping. However, Code Case N–799 only requires a licensee to perform a volumetric examination of the inner ⅓ of the weld and a surface examination of the outer diameter. The NRC finds that the requirements of Code Case N–799 are identical to those in ASME Section XI, Table IWB–2500–1, Examination Category B–F for welds between vessels nozzles larger than NPS 4 and piping. As such, the NRC finds that the examination requirements proposed in Code Case N–799 are not appropriate for the SG-to-RCP weld because the service conditions of this weld are significantly different from those that would be experienced by a traditional vessel nozzle-to-piping/safe end butt weld.

Specifically, in addition to the operating environment (RCS pressure, temperature, and exposure to coolant) and loads expected on a traditional nozzle-to-safe end weld, each SG-to-RCP weld will support the full weight of a reactor coolant pump with no other vertical or lateral supports. The SG-to-RCP welds will also be subject to pump rotational forces and vibration loads from both the steam generator and the reactor coolant pump. In the absence of operating experience for the weld in question or a bounding analysis, which demonstrates that a potential fabrication defect in the outer ⅔ of the weld will not experience subcritical crack growth, the NRC finds that the effects of these additional operating loads and stresses are unknown. Absent operating experience or a bounding analysis, the NRC finds that it is inappropriate to allow a reduced examination volume at this time. Therefore, the NRC is proposing that the examination of the aforementioned welds must be full volume.

The NRC's second concern is that the examinations required by Code Case N–799 do not provide assurance that inservice degradation can be detected for this dissimilar metal weld that includes CASS. Code Case N–799 does not require the use of performance demonstration in accordance with Mandatory Appendix VIII of the ASME Code, Section XI. The NRC finds that ultrasonic inspection of CASS material is difficult due to the grain structure of the material. In order to have a meaningful ultrasonic examination to detect and size inservice degradation, the ultrasonic examination procedures, equipment, and personnel must be qualified by performance demonstration in accordance with Mandatory Appendix VIII of ASME Code, Section XI. This is consistent with current practices for other ultrasonic examinations of dissimilar metal welds in the operating fleet.

When considering these proposed conditions, the NRC recognizes that factors exist that may limit the ultrasonic examination volume that can be qualified by performance demonstration. For example, the qualified volume would be limited in components with wall thicknesses beyond the crack detection and sizing capabilities of a through wall ultrasonic performance-based qualification. To address the scenario in which the examination volume that can be qualified by performance demonstration is less than 100 percent of the volume, the NRC is proposing to allow an ultrasonic examination of the qualified volume, provided that a flaw evaluation is performed to demonstrate the integrity of the examination volume that cannot be qualified by performance demonstration. The flaw evaluation should be of the largest hypothetical crack that could exist in the volume not qualified for ultrasonic examination. The licensee's revised examination plan would be subject to prior NRC approval as an alternative in accordance with § 50.55a(z). The NRC believes that this proposed condition provides assurance that the integrity of the welds in question will be maintained, despite a limited examination capability.

Finally, these proposed conditions are consistent with the conditions described in Regulatory Guide 1.147, Revision 18, which conditionally accepts Code Case N–799. Because Code Case N–799 has been incorporated into ASME Section XI, the NRC's conditions on the Code Case will be carried over as a condition on the ASME Code.

Therefore, in order to ensure that the examinations of Steam Generator Nozzle-to-Component welds and Reactor Vessel Nozzle-to-Component welds will be examinations of the full volume of the welds and that the ultrasonic examination procedures, equipment, and personnel are qualified by performance demonstration, in accordance with Mandatory Appendix VIII of ASME Code, Section XI, the NRC proposes to add conditions to the provisions of Table IWB–2500–1, Examination Category B–F, Pressure Retaining Dissimilar Metal Welds in Vessel Nozzles, Item B5.11 (NPS 4 or Larger Nozzle-to-Component Butt Welds) of the 2013 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of § 50.55a. The NRC also proposes to add a condition to the provision of Table IWB–2500–1, Item B5.71 (NPS 4 or Larger Nozzle-to-Component Butt Welds) of the 2011 Addenda through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of § 50.55a.

*C. ASME OM Code*

10 CFR 50.55a(b)(3), Conditions on ASME OM Code

The new Appendix IV in the 2017 Edition of the ASME OM Code provides improved preservice testing (PST) and IST of active air operated valves (AOVs) within the scope of the ASME OM Code. Appendix IV specifies quarterly stroke-time testing of AOVs, where practicable. These are similar to the current requirements in Subsection ISTC, ''Inservice Testing of Valves in Light-Water Reactor Nuclear Power Plants,'' of the ASME OM Code. In addition, Appendix IV specifies a preservice performance assessment test for AOVs with low safety significance, and initial and periodic performance assessment testing for AOVs with high safety significance on a sampling basis over a maximum 10-year interval.

The ASME developed the improved PST and IST provisions for AOVs in Appendix IV to the ASME OM Code in response to lessons learned from operating experience and test programs for AOVs and other power-operated valves (POVs) used at nuclear power plants. Over the years, the NRC has issued numerous generic communications to address weaknesses with AOVs and other POVs in performing their safety functions. For example, the NRC issued Generic Letter (GL) 88–14, ''Instrument Air Supply System Problems Affecting Safety-Related Equipment,'' to request that licensees verify that AOVs will perform

as expected in accordance with all design-basis events. The NRC provided the results of studies of POV issues in several documents, including NUREG/CR–6654, ''A Study of Air-Operated Valves in U.S. Nuclear Power Plants'' (ADAMS Accession No. ML003691872). The NRC has issued several information notices to alert licensees to IST experience related to POV performance, including IN 86–50, ''Inadequate Testing To Detect Failures of Safety-Related Pneumatic Components or Systems;'' and IN 85–84, ''Inadequate Inservice Testing of Main Steam Isolation Valves.'' The NRC issued IN 96–48, ''Motor-Operated Valve Performance Issues,'' which described lessons learned from motor-operated valve (MOV) programs that are applicable to other POVs. Based on operating experience with the capability of POVs to perform their safety functions, the NRC established Generic Safety Issue 158, ''Performance of Safety-Related Power-Operated Valves Under Design-Basis Conditions,'' to evaluate whether additional regulatory actions were necessary to address POV performance issues. In Regulatory Issue Summary 2000–03, ''Resolution of Generic Safety Issue (GSI) 158, 'Performance of Safety Related Power-Operated Valves Under Design-Basis Conditions','' dated March 15, 2000, the NRC closed GSI–158 by specifying attributes for an effective POV testing program that incorporates lessons learned from MOV research and testing programs. More recently, the NRC issued IN 2015–13, ''Main Steam Isolation Valve Failure Events,'' to alert nuclear power plant applicants and licensees to examples of operating experience where deficiencies in licensee processes and procedures can contribute to the failure of main steam isolation valves (MSIVs), which may be operated by air actuators or combined air/hydraulic actuators. The NRC considers that the improved IST provisions specified in Appendix IV to the ASME OM Code will address the POV performance issues identified by operating experience with AOVs, including MSIVs, at nuclear power plants.

Paragraph IV–3800, ''Risk-Informed AOV Inservice Testing,'' allows the establishment of risk-informed AOV IST that incorporates risk insights in conjunction with functional margin to establish AOV grouping, acceptance criteria, exercising requirements, and testing intervals. Risk-informed AOV IST includes initial and periodic performance assessment testing of high-safety significant AOVs with the results of that testing used to confirm the capability of low-safety significant AOVs within the same AOV group. For example, paragraph IV–3600, ''Grouping of AOVs for Performance Assessment Testing,'' states that test results shall be evaluated for all AOVs in a group. Paragraph IV–6500, ''Performance Assessment Test Corrective Action,'' specifies that correction action be taken in accordance with the Owner's corrective action requirements if AOV performance is unacceptable. The NRC considers that these provisions in Appendix IV will provide assurance that all AOVs within the scope of Appendix IV will be addressed for their operational readiness initially and on a periodic basis. The NRC is proposing to revise the last sentence of § 50.55a(b)(3) to specify that when implementing the ASME OM Code, conditions are applicable only as specified in (b)(3).

10 CFR 50.55a(b)(3)(ii) OM Condition: Motor-Operated Valve (MOV) Testing

The NRC proposes to amend § 50.55a(b)(3)(ii) to specify that the condition applies to the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition of the ASME OM Code without the need to revise § 50.55a(b)(3)(ii).

10 CFR 50.55a(b)(3)(iv) OM Condition: Check Valves (Appendix II)

The NRC proposes to amend § 50.55a(b)(3)(iv) to accept the use of Appendix II, ''Check Valve Condition Monitoring Program,'' in the 2017 Edition of the ASME OM Code without conditions based on its updated provisions. For example, Appendix II in the 2017 Edition of the ASME OM Code incorporates Table II, ''Maximum Intervals for Use When Applying Interval Extensions,'' as well as other conditions currently specified in § 50.55a(b)(3)(iv). The NRC also proposes to update § 50.55a(b)(3)(iv) to apply Table II to Appendix II of the ASME OM Code, 2003 Addenda through the 2015 Edition. Further, the NRC proposes to remove the outdated conditions in paragraphs (b)(3)(iv)(A) through (D) based on their application to older editions and addenda of the ASME OM Code that are no longer applied at nuclear power plants, and on the incorporation of those conditions in recent editions and addenda of the ASME OM Code.

10 CFR 50.55a(b)(3)(viii) OM Condition: Subsection ISTE

The NRC proposes to amend § 50.55a(b)(3)(viii) to specify that the condition on the use of Subsection ISTE, ''Risk-Informed Inservice Testing of Components in Light-Water Reactor Nuclear Power Plants,'' applies to the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition of the ASME OM Code without the need to revise § 50.55a(b)(3)(viii).

10 CFR 50.55a(b)(3)(ix) OM Condition: Subsection ISTF

The NRC proposes to amend § 50.55a(b)(3)(ix) to specify that Subsection ISTF, ''Inservice Testing of Pumps in Water-Cooled Reactor Nuclear Power Plants—Post-2000 Plants,'' of the ASME OM Code, 2017 Edition, is acceptable without conditions. The NRC also proposes to amend § 50.55a(b)(3)(ix) to specify that licensees applying Subsection ISTF in the 2015 Edition of the ASME OM Code shall satisfy the requirements of Mandatory Appendix V, ''Pump Periodic Verification Test Program,'' of the ASME OM Code, in addition to the current requirement to satisfy Appendix V when applying Subsection ISTF in the 2012 Edition of the ASME OM Code. Subsection ISTF in the 2017 Edition of the ASME OM Code has incorporated the provisions from Appendix V such that this condition is not necessary for the 2017 Edition of the ASME OM Code.

10 CFR 50.55a(b)(3)(xi) OM Condition: Valve Position Indication

The NRC proposes to amend § 50.55a(b)(3)(xi) for the implementation of paragraph ISTC–3700, ''Position Verification Testing,'' in the ASME OM Code to apply to the 2012 Edition through the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition and addenda of the ASME OM Code without the need to revise § 50.55a(b)(3)(xi). In addition, the NRC proposes to clarify that this condition applies to all valves with remote position indicators within the scope of Subsection ISTC, ''Inservice Testing of Valves in Water-Cooled Reactor Nuclear Power Plants,'' including MOVs within the scope of Mandatory Appendix III, ''Preservice and Inservice Testing Active Electric Motor-Operated Valve Assemblies in Water-Cooled Reactor Nuclear Power Plants.'' ISTC–3700

references Mandatory Appendix III for valve position testing of MOVs. The development of Mandatory Appendix III was intended to verify valve position indication as part of the diagnostic testing performed on the intervals established by the appendix. This clarification will ensure that verification of valve position indication is understood to be important for all valves with remote position indication addressed in Subsection ISTC and all of its mandatory appendices.

10 CFR 50.55a(b)(3)(xii) OM Condition: Air-Operated Valves (Appendix IV)

The NRC proposes to include new § 50.55a(b)(3)(xii) to require the application of the provisions in Appendix IV of the 2017 Edition of the ASME OM Code, when implementing the ASME OM Code, 2015 Edition. The new Appendix IV in the 2017 Edition of the ASME OM Code provides improved PST and IST of active AOVs within the scope of the ASME OM Code. This condition would provide consistency in the implementation of these two new editions of the ASME OM Code.

10 CFR 50.55a(f): Preservice and Inservice Testing Requirements

The NRC regulations in § 50.55a(f) specify that systems and components of boiling and pressurized water-cooled nuclear power reactors must meet the requirements for preservice and inservice testing of the ASME BPV Code and ASME OM Code. Paragraph (f) in § 50.55a states that the requirements for inservice inspection of Class 1, Class 2, Class 3, Class MC, and Class CC components (including their supports) are located in paragraph (g) in § 50.55a. Applicants and licensees should note that requirements for inservice examination and testing of dynamic restraints (snubbers) are located in paragraph (b)(3)(v) in § 50.55a. The NRC staff is considering this clarification of the location of inservice examination and testing requirements for dynamic restraints in § 50.55a(f) and (g) for a future rulemaking.

10 CFR 50.55a(f)(4)(i): Applicable IST Code: Initial 120-Month Interval

Several stakeholders submitted public comments on the § 50.55a 2009–2013 proposed rule requesting that the time schedule for complying with the latest ASME Code edition and addenda in § 50.55a(f)(4)(i) and (g)(4)(i) for the IST and ISI programs, respectively, be relaxed from the current time interval of 12 months to a new time interval of 24 months prior to the applicable milestones in those paragraphs. The ASME reiterated this request during an NRC/ASME management public teleconference that was held on March 16, 2016. During that teleconference, ASME discussed the challenges associated with meeting the 12-month time schedule in order to submit timely relief or alternative requests for NRC review. These comments were outside the scope of the proposed § 50.55a ASME 2009–2013 rule. However, the NRC staff indicated that the request would be considered in a future rulemaking.

In evaluating the suggested change, the NRC has determined that the primary benefit from the relaxation of this § 50.55a(f)(4)(i) requirement is that licensees of new nuclear power plants will have more time to prepare their initial IST program and procedures and any proposed relief or alternative requests to the applicable edition of the ASME OM Code. In preparing this proposed rule, the NRC has determined that relaxation of the time schedule for satisfying the latest edition of the ASME OM Code for the initial 120-month IST interval to be appropriate. However, the NRC considers that a 24-month time schedule would be contrary to the intent of the requirement to apply the latest edition of the ASME OM Code that is published every 24 months because it could result in licensees applying an outdated edition in the initial 120-month IST interval. Therefore, the NRC proposes to extend the time schedule to satisfy the latest edition and addenda of the ASME OM Code from the current 12 months to 18 months for the initial 120-month IST interval.

10 CFR 50.55a(f)(4)(ii): Applicable IST Code: Successive 120-Month Intervals

As discussed in the previous section, several stakeholders submitted public comments on the § 50.55a 2009–2013 proposed rule, requesting that the time schedule for complying with the latest ASME Code edition in § 50.55a(f)(4)(ii) and (g)(4)(ii) for the IST and ISI programs, respectively, be relaxed from the current time period of 12 months to a new time period of 24 months prior to the applicable milestones in those paragraphs. The ASME reiterated this request during an NRC/ASME management public teleconference that was held on March 16, 2016. During that teleconference, ASME discussed the challenges associated with meeting the 12-month time schedule in order to submit timely relief or alternative requests for NRC review. These comments were outside the scope of the proposed § 50.55a ASME 2009–2013 rule. However, the NRC staff indicated that the proposed change would be considered for a future rulemaking. In evaluating the proposed change, the NRC has determined that the primary benefit from the relaxation of this § 50.55a(f)(4)(ii) requirement is that licensees of nuclear power plants will have more time to update their successive IST programs and procedures, and to prepare any proposed relief or alternative requests to the applicable edition of the ASME OM Code. In addition, licensees of each nuclear power plant will not need to review ASME OM Code editions incorporated by reference in § 50.55a after the relaxed 18-month time period before the start of the IST program interval compared to the 12-month time period required by the current regulations. In preparing this proposed rule, the NRC has determined that relaxation of the time schedule for satisfying the latest edition of the ASME OM Code for the successive 120-month IST interval to be appropriate. However, the NRC considers that a 24-month time schedule would be contrary to the intent of the requirement to apply the latest edition of the ASME OM Code that is published every 24 months. Therefore, the NRC proposes to extend the time schedule to satisfy the latest edition and addenda of the ASME OM Code from the current 12 months to 18 months for successive 120-month IST intervals.

10 CFR 50.55a(f)(7), Inservice Testing Reporting Requirements

The NRC proposes to add § 50.55a(f)(7) to require nuclear power plant applicants and licensees to submit their IST Plans and interim IST Plan updates related to pumps and valves, and IST Plans and interim Plan updates related to snubber examination and testing to NRC Headquarters, the appropriate NRC Regional Office, and the appropriate NRC Resident Inspector.

The ASME OM Code states in paragraph (a) of ISTA–3200, ''Administrative Requirements,'' that IST Plans shall be filed with the regulatory authorities having jurisdiction at the plant site. However, the ASME is planning to remove this provision from the ASME OM Code in a future edition because this provision is more appropriate as a regulatory requirement rather than a Code requirement. This change is being proposed in this rulemaking rather than in a future rulemaking to ensure that there will not be a period of time when this requirement is not in effect. The NRC staff needs these IST Plans for use in evaluating relief and alternative requests, and deferral of quarterly testing to cold shutdowns and refueling outages. Therefore proposed condition is an administrative change that would

relocate the provision from the ASME OM Code to § 50.55a.

10 CFR 50.55a(g)(4)(i): Applicable ISI Code: Initial 120-Month Interval

The NRC proposes to amend § 50.55a(g)(4)(i) to relax the time schedule for complying with the latest edition of the ASME BPV Code for the initial 120-month ISI program interval, respectively, from 12 months to 18 months. The basis for the relaxation of the time schedule discussed previously for the requirement in § 50.55a(f)(4)(i) to comply with the latest edition and addenda of ASME Section XI Code for the initial 120-month ISI program is also applicable to the relaxation of the time period for complying with the latest edition and addenda of the ASME BPV Code for the initial 120-month ISI program.

10 CFR 50.55a(g)(4)(ii): Applicable ISI Code: Successive 120-Month Intervals

The NRC proposes to amend § 50.55a(g)(4)(ii) to relax the time schedule for complying with the latest edition and addenda of the ASME BPV Code for the successive 120-month ISI program intervals, respectively, from 12 months to 18 months. The basis for the relaxation of the time schedule discussed above for the requirement in § 50.55a(f)(4)(ii) to comply with the latest edition and addenda of the ASME Section XI Code for the successive 120-month ISI programs is also applicable to the relaxation of the time period for complying with the latest edition and addenda of the ASME BPV Code for the successive 120-month ISI programs. The NRC is proposing to amend the regulation in § 50.55a(g)(4)(ii) to provide up to an 18 month period for licensees to update their Appendix VIII program for those licensees whose ISI interval commences during the 12 through 18-month period after the effective date of this rule.

10 CFR 50.55a(g)(6)(ii)(C): Augmented ISI Requirements: Implementation of Appendix VIII to Section XI

The NRC proposes to remove the language found in § 50.55a(g)(6)(ii)(C) from the current regulations. This paragraph describes requirements for initial implementation of older supplements in ASME BPV Code, Section XI Appendix VIII. Because the implementation dates have passed, and because licensees are no longer using these older editions and addenda of the Code that are referenced in this paragraph, the NRC proposes to remove the condition.

ASME BPV Code Case N–729–6

On September 10, 2008, the NRC issued a final rule to update § 50.55a to incorporate by reference the 2004 Edition of the ASME BPV Code (73 FR 52730). As part of the final rule, § 50.55a(g)(6)(ii)(D) implemented an augmented inservice inspection program for the examination of RPV upper head penetration nozzles and associated partial penetration welds. The program required the implementation of ASME BPV Code Case N–729–1, with certain conditions.

The application of ASME BPV Code Case N–729–1 was necessary because the inspections required by the 2004 Edition of the ASME BPV Code, Section XI were not written to address degradation caused by primary water stress corrosion cracking (PWSCC) of the RPV upper head penetration nozzles and associated welds. The safety consequences of inadequate inspections of the subject nozzles can be significant. The NRC's determination that the ASME BPV Code-required inspections are inadequate is based upon operating experience and analysis, because nickel-based Alloy 600/82/182 material in the RPV head penetration nozzles and associated welds are susceptible to PWSCC. The absence of an effective inspection regime could, over time, result in unacceptable circumferential cracking, or the degradation of the RPV upper head or other reactor coolant system components by leakage-assisted corrosion. These degradation mechanisms increase the probability of a loss-of-coolant accident.

Examination frequencies and methods for RPV upper head penetration nozzles and welds are provided in ASME BPV Code Case N–729–1. The use of code cases is voluntary, so these provisions were developed, in part, with the expectation that the NRC would incorporate the code case by reference into § 50.55a. Therefore, the NRC adopted rule language in § 50.55a(g)(6)(ii)(D), requiring implementation of ASME BPV Code Case N–729–1, with conditions, in order to enhance the examination requirements in the ASME BPV Code, Section XI for RPV upper head penetration nozzles and welds. The examinations conducted in accordance with ASME BPV Code Case N–729–1 provide reasonable assurance that ASME BPV Code allowable limits will not be exceeded and that PWSCC will not lead to failure of the RPV upper head penetration nozzles or welds. However, the NRC concluded that certain conditions were needed in implementing the examinations in ASME BPV Code Case N–729–1. These conditions are set forth in § 50.55a(g)(6)(ii)(D).

On March 3, 2016, the ASME approved the sixth revision of ASME BPV Code Case N–729, (N–729–6). This revision changed certain requirements based on a consensus review of the inspection techniques and frequencies. These changes were deemed necessary by the ASME to supersede the previous requirements under previous versions of N–729 to establish an effective long-term inspection program for the RPV upper head penetration nozzles and associated welds in PWRs. The major changes in the latest revisions are the inclusion of peening mitigation and extending the replaced head volumetric inspection frequency. Other minor changes were also made to address editorial issues and to clarify the code case requirements.

The NRC proposes to update the requirements of § 50.55a(g)(6)(ii)(D) to require licensees of PWRs to implement ASME BPV Code Case N–729–6, with certain conditions. The NRC conditions have been modified to address the changes in ASME BPV Code Case N–729–6 from the latest NRC-approved ASME Code Case N–729 revision in § 50.55a(g)(6)(ii)(D), revision 4, (N–729–4). The NRC's revisions to the conditions on ASME BPV Code Case N–729–4 that support the implementation of N–729–6 are discussed in the next sections.

10 CFR 50.55a(g)(6)(ii)(D) Augmented ISI Requirements: Reactor Vessel Head Inspections

The NRC proposes to revise the paragraphs in § 50.55a(g)(6)(ii)(D) as summarized in the following discussions, which identify the changes in requirements associated with the proposed update from ASME BPV Code Case N–729–4 to N–729–6. The major changes in the code case revision allowing peening as a mitigation method and extend the PWSCC-resistant RPV upper head inspection frequency from 10 years to 20 years. Additionally, the code case revision changed the volumetric inspection requirement for plants with previous indications of PWSCC and allowed the use of the similarities in sister plants to extend inspection intervals. The NRC is not able to fully endorse these two new items, therefore the NRC is proposing new conditions. The NRC has determined that one previous condition restricting the use of Appendix I of the code case could be relaxed. Further, the code case deadline for baseline examinations of February 10, 2008 is well in the past, therefore the NRC is

proposing a condition that would ensure new plants can perform baseline examinations without the need for an alternative to these requirements under § 50.55a(z). Finally, the NRC is proposing to add a condition that would allow other licensees to use a volumetric leak path assessment in lieu of a surface examination.

10 CFR 50.55a(g)(6)(ii)(D)(1) Implementation

The NRC proposes to revise § 50.55a(g)(6)(ii)(D)(*1*) to change the version of ASME BPV Code Case N–729 from N–729–4 to N–729–6 for the reasons previously set forth. Due to the incorporation of N–729–6, the date to establish applicability for licensed PWRs will be changed to anytime within one year of the effective date of the final rule. This is to allow some flexibility for licensees to implement the requirements. No new inspections are required, therefore this allows licensees to phase in the new program consistent with their needs and outage schedules. The NRC is also including wording to allow licensee's previous NRC-approved alternatives to remain valid. The NRC has completed a review of the currently effective proposed alternatives and finds that each effective proposed alternative can remain effective through the update from ASME Code Case N–729–4 to N–729–6 with the proposed NRC conditions.

10 CFR 50.55a(g)(6)(ii)(D)(2) Appendix I Use

The NRC proposes to revise § 50.55a(g)(6)(ii)(D)(*2*). The NRC has determined that the current condition, that the use of Appendix I is not permitted, is no longer necessary. However the NRC is proposing a new condition that the analyses required by the code case for missed coverage both above and below the J groove weld include the analysis described in I–3000. The NRC's basis for revising the condition is that, based on its reviews of alternatives proposed by licensees related to this issue, over a period in excess of 10 years, it has become apparent to the NRC staff that the I–3000 method produces satisfactory results and is correctly performed by licensees. The NRC also notes that the probabilistic approach has not been proposed by licensees and that it has not been evaluated (including the acceptance criteria) by the NRC.

The NRC staff finds the proposed change to the condition will have minimal impact on safety, while minimizing the regulatory burden of NRC review and approval of a standardized method to provide reasonable assurance of structural integrity of a reduced inspection area.

10 CFR 50.55a(g)(6)(ii)(D)(4) Surface Exam Acceptance Criteria

The NRC proposes to revise § 50.55a(g)(6)(ii)(D), the current condition on surface examination acceptance criteria, to update the ASME BPV Code Case reference. The NRC proposes to modify the condition § 50.55a(g)(6)(ii)(D)(*4*) by changing the referenced version of the applicable ASME BPV Code Case N–729 from N 729–4 to N–729–6.

10 CFR 50.55a(g)(6)(ii)(D)(5) Peening

The NRC proposes to add a new condition that will allow licensees to obtain inspection relief for peening of their RPV upper heads in accordance with the latest NRC-approved requirements, contained in Electric Power Research Institute (EPRI), Materials Reliability Project (MRP) Topical Report, ''Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement,'' (MRP–335, Revision 3–A) (ADAMS Accession No. ML16319A282). This document provides guidelines for the NRC-approved performance criteria, qualification requirements, inspection frequency, and scope. A licensee may peen any component in accordance with the requirements and limitations of the ASME Code. However, in order to obtain NRC-approved inspection relief for a RPV head mitigated with peening, as described in MRP–335, Revision 3–A, this proposed condition establishes MRP–335, Revision 3–A as the requirement for performance criteria, qualifications and inspections. Otherwise the requirements of an unmitigated RPV upper head inspection program shall apply.

As part of this proposed condition, the NRC is removing two of the requirements contained in MRP–335, Revision 3–A: (1) The submission of a plant-specific alternative to the code case will not be required; and (2) Condition 5.4 will not be required.

Hence, the NRC's proposed condition combines the use of the latest NRC-accepted performance criteria, qualification and inspection requirements in MRP–335, Revision 3–A, would allow licensees to not have to submit a plant-specific proposed alternative to adopt the inspection frequency of peened RPV head penetration nozzles in MRP–335, Revision 3–A, and does not require licensees to adhere to NRC Condition 5.4 of MRP–335, Revision 3–A. By combining these points in the proposed condition, it alleviates the need to highlight nine areas in N–729–6 that do not conform to the current NRC-approved requirements for inspection relief provided in MRP–335, Revision 3–A.

Because the NRC proposes to require MRP–335, Revision 3–A, within this proposed condition on the requirements in the ASME Code Case, the NRC is incorporating by reference MRP–335, Revision 3–A, into § 50.55a(a)(4)(i).

10 CFR 50.55a(g)(6)(ii)(D)(6) Baseline Examinations

The NRC proposes to add a new condition to address baseline examinations. Note 7(c) of Table 1 of ASME BPV Code Case N–729–6 requires baseline volumetric and surface examinations for plants with an RPV upper head with less than 8 effective degradation years (EDY) by no later than February 10, 2008. This requirement has been in place since ASME BPV Code Case N–729–1 was first required by this section, and it was a carryover requirement from the First Revised NRC Order EA–03–009. However, since any new RPV upper head replacements would occur after 2008, this requirement can no longer be met. While it is not expected that a new head using A600 nozzles would be installed, the NRC is conditioning this section to prevent the need for a licensee to submit a proposed alternative for such an event, should it occur. The NRC proposed condition would instead require a licensee to perform a baseline volumetric and surface examination within 2.25 reinspection years not to exceed 8 calendar years, as required under N–729–6, Table 1 for the regular interval of inspection frequency.

10 CFR 50.55a(g)(6)(ii)(D)(7) Sister Plants

The NRC proposes to add a new condition to address the use of the term sister plants for the examinations of RPV upper heads. The use of ''sister plants'' under ASME BPV Code Case N–729–6 would allow extension of the volumetric inspection of replaced RPV heads with resistant materials from the current 10-year inspection frequency to a period of up to 40 years.

As part of mandating the use of ASME BPV Code Case N–729–6 in this proposed rule, the NRC is approving the ASME Code's extension of the volumetric inspection frequency from every 10 years to every 20 years. The NRC finds that the documents, ''Technical Basis for Reexamination Interval Extension for Alloy 690 PWR Reactor Vessel Top Head Penetration

Nozzles (MRP–375)'' and improvement factors ''Recommended Factors of Improvement for Evaluating Primary Water Stress Corrosion Cracking (PWSCC) Growth Rates of Thick-Wall Alloy 690 Materials and Alloy 52, 152, and Variants Welds (MRP–386),'' provide a sound basis for a 20-year volumetric inspection interval and a 5-year bare metal visual inspection interval for alloy 690/52/152 materials subject to this code case thereby providing reasonable assurance of the structural integrity of the RPV heads.

However, at the present time, the NRC is proposing a condition to prohibit the concept of ''sister plants''. If used, this concept would increase the inspection interval for plants with sisters from 20 years to 40 years. The NRC is currently evaluating both the definition of sister plants and factors of improvement between the growth of PWSCC in alloys 600/82/182 and 690/52/152.

It is currently unclear to the NRC staff whether the criteria for sister plants (*i.e.,* same owner) are appropriate criteria. The NRC staff also questions whether other criteria such as environment, alloy heat, and numbers of sister plants in a particular group should be included in the definition.

The NRC staff continues to review information on PWSCC growth rates and factors of improvement for alloy 690/52/152 and 600/82/182 as proposed in MRP–386. While the NRC staff has concluded that crack growth in alloy 690/52/152 is sufficiently slower than in alloy 600/82/182 to support an inspection interval of 20 years, work continues in assessing whether the data and analyses support a 40-year interval.

Public comments concerning both the definition of sister plants and crack growth rate factors of improvement are being solicited during the comment period of this proposed rule.

10 CFR 50.55a(g)(6)(ii)(D)(8) Volumetric Leak Path

The NRC proposes to add a new condition to substitute a volumetric leak path assessment for the required surface exam of the partial penetration weld of Paragraph -3200(b). The NRC finds that the use of a volumetric leak path assessment is more useful to confirm a possible leakage condition through the J-groove weld than a surface examination of the J-groove weld. While a surface examination may detect surface cracking, it will not confirm that such an indication is a flaw that caused leakage. A positive volumetric leak path assessment will provide a clear confirmation of leakage, either through the nozzle, weld or both. The NRC notes, that since all nozzles have had a volumetric examination, a baseline volumetric leak path assessment is available for comparison, and therefore provides additional assurance of effectiveness of the volumetric leak path assessment technique. As such, to eliminate the need for potential proposed alternatives requiring NRC review and authorization, this condition is proposed to increase regulatory efficiency.

ASME BPV Code Case N–770–5

On June 21, 2011 (76 FR 36232), the NRC issued a final rule including § 50.55a(g)(6)(ii)(F), requiring the implementation of ASME BPV Code Case N–770–1, ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS N86182 Weld Filler Material With or Without Application of Listed Mitigation Activities,'' with certain conditions. On November 7, 2016, the ASME approved the fifth revision of ASME BPV Code Case N 770 (N–770–5). The major changes from N–770–2, the last revision to be mandated by § 50.55a(g)(6)(ii)(F), to N–770–5 included extending the inspection frequency for cold leg temperature dissimilar metal butt welds greater than 14-inches in diameter to once per inspection interval not to exceed 13 years, performance criteria and inspections for peening mitigated welds, and inservice inspection requirements for excavate and weld repair mitigations. Minor changes were also made to address editorial issues, to correct figures, or to add clarity. The NRC finds that the updates and improvements in N–770–5 are sufficient to update § 50.55a(g)(6)(ii)(F).

The NRC, therefore, is updating the requirements of § 50.55a(g)(6)(ii)(F) to require licensees to implement ASME BPV Code Case N–770–5, with conditions. The previous NRC conditions have been modified to address the changes in ASME BPV Code Case N–770–5 and to ensure that this regulatory framework will provide adequate protection of public health and safety. The following sections discuss each of the NRC's revisions to the conditions on ASME BPV Code Case N–770–2 that support the implementation of N–770–5.

10 CFR 50.55a(g)(6)(ii)(F)(1) Augmented ISI Requirements: Examination Requirements for Class 1 Piping and Nozzle Dissimilar-Metal Butt Welds—(1) Implementation

The NRC proposes to revise this condition to mandate the use of ASME BPV Code Case N–770–5, as conditioned by this section, in lieu of the current requirement to mandate ASME BPV Code Case N–770–2. The wording of this condition will allow a licensee to adopt this change anytime during the first year after the publication of the final rule. This is to provide flexibility for a licensee to adapt to the new requirements. Finally, included in this provision is an allowance for all previous NRC-approved licensee's alternatives to the requirements of this section to remain valid, regardless of the version of ASME BPV Code Case N–770 they were written against. The NRC has reviewed all currently applicable licensee alternatives to this code case and has found that the change from Code Case N–770–2 to N–770–5 required by this proposed regulation neither invalidates nor degrades plant safety associated with the continued use of existing alternatives. Therefore, to provide regulatory efficiency, the NRC finds that all previous NRC-approved alternatives will remain valid for their specifically NRC-approved duration of applicability.

10 CFR 50.55a(g)(6)(ii)(F)(2) Categorization

The NRC proposes to revise this condition to include the categorization of welds mitigated by peening. This condition currently addresses the categorization for inspection of unmitigated welds and welds mitigated by various processes.

The new section, to this revised condition, is to categorize dissimilar metal butt welds mitigated by peening. ''Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement,'' MRP–335, is the technical basis summary document for the application of peening in upper heads and dissimilar metal butt welds to address primary water stress corrosion cracking. The NRC conducted a comprehensive review of this document for generic application. The requirements contained in the NRC-approved version of this report, MRP–335, Revision 3–A differ in several respects from the requirements contained in ASME BPV Code Case N–770–5. As such, to avoid confusion with multiple conditions, the NRC proposes to accept categorization of welds as being mitigated by peening, if said peening follows the performance criteria, qualification requirements, and inspection guidelines of MRP–335, Revision 3–A. Once implemented, the inspection guidelines of MRP–335, Revision 3–A would provide inspection relief from the requirements of an unmitigated dissimilar metal butt weld.

As part of this proposed condition, the NRC is removing the need for the licensee to submit a plant-specific proposed alternative to implement the inspection relief in accordance with MRP–335, Revision 3–A.

Because MRP–335, Revision 3–A, is being proposed to be used as a condition against the requirements in the ASME Code Case, the NRC is incorporating by reference MRP–335, Revision 3–A, into § 50.55a(a)(4)(i).

The requirements for categorization of all other mitigated or non-mitigated welds remain the same.

As noted previously, all of these requirements, except for the categorization of peening, were in the previous conditions for mandated use of ASME BPV Code Cases N–770–2 and N–770–1.

10 CFR 50.55a(g)(6)(ii)(F)(3) Baseline Examinations

The NRC proposes to delete this condition. The current condition regarding baseline inspections was considered unnecessary, as all baseline volumetric examinations are expected to have been completed. If a baseline examination is required, the licensee can follow the examination requirements in ASME BPV Code Case N–770–5. This condition number is reserved, to maintain the NRC condition numbering from the past rulemaking, and in this way, limit the need for additional updates to current procedures and documentation, when no substantive change has occurred.

10 CFR 50.55a(g)(6)(ii)(F)(4) Examination Coverage

The NRC proposes to revise this condition to make an editorial change to update the reference to ASME BPV Code Case N–770–2 to N–770–5.

10 CFR 50.55a(g)(6)(ii)(F)(6) Reporting Requirements

The NRC proposes to revise this condition to address the deletion of wording in Paragraph -3132.3(d) of ASME BPV Code Case N–770–5 and relax the requirement for submitting the summary report to the NRC. The purpose of this condition is to obtain timely notification of unanticipated flaw growth in a mitigated butt weld in the reactor coolant pressure boundary. While NRC onsite and regional inspectors provide a plant-specific role in assessing the current safe operation of a specific plant, the NRC staff in the Office of Nuclear Reactor Regulation is also responsible for assessing the generic impact of the potential reduced effectiveness of a mitigation technique across the fleet. In order to address these concerns, the NRC has found that, in the event that a dissimilar metal butt weld is degraded, it is necessary for the NRC staff to obtain timely notification of the flaw growth and a report summarizing the evaluation, along with inputs, methodologies, assumptions, and causes of the new flaw or flaw growth within 30 days of the plant's return to service. This is a relaxation from the previous requirement to provide a report prior to entering mode 4 prior to plant startup. In its review of the prior condition, the NRC has determined that the burden associated with the submission of a report prior to entry into mode 4 exceeded the immediate safety benefit from the report. The NRC also has determined that a timely notification regarding the event was sufficient to begin the determination of whether an immediate generic safety concern exists. Further, the NRC has found the submittal of a report within 30 days is both necessary and sufficient to allow for the evaluation of any long-term impacts of the flaw growth on the overall inspection programs for that specific mitigation type.

The NRC has found that the deletion of the following sentence from Paragraph -3132.3(d), ''Any indication in the weld overlay material characterized as stress corrosion cracking is unacceptable,'' did not have a sufficiently identified technical basis to support its removal. Given that the NRC's approval of weld overlays is based on the resistance of the overlay material to cracking, any flaw growth into this material should call into question the effectiveness of that specific mitigation method. However, the NRC recognizes that there could be instances were NDE measurement uncertainty may require a conservative call on flaw size that may lead to the assumption of flaw growth. Rather than automatically assume this flaw growth is unacceptable, as stated in the previous requirement mandated under ASME BPV Code Case N–770–2, the NRC has found that reasonable assurance of plant safety could be assured by reporting this condition to the NRC for evaluation, in accordance with this condition. This relaxation of the previous requirement allows for regulatory flexibility in assessing the safety significance of any potential flaw growth.

10 CFR 50.55a(g)(6)(ii)(F)(9) Deferral

The NRC proposes to revise this condition to address the potential deferrals of volumetric inspections for welds mitigated by peening as well as for welds mitigated by the excavate and weld technique. Volumetric inspections performed once per interval or on a ten-year basis can, in some instances, be deferred to the end of the current ten-year inservice inspection interval. As such, this could allow an inspection frequency, which is assumed to be approximately 10 years to be extended to as much as 20 years. While there are certain conditions that would warrant such an extension, the NRC finds, in the following two instances, that allowing such deferrals would provide an unacceptable reduction in the margin for safety.

For welds peened in accordance with the performance and qualification criteria of MRP–335, Revision 3–A, the long-term inservice inspection interval, as required by MRP–335, Revision 3–A Table 4–1, is once per inspection interval. Note 11 of Table 4–1 would allow deferral of peened welds beyond the 10-year inspection frequency. This deferral would be beyond the NRC technical basis of Paragraph 4.6.3 in the NRC Safety Evaluation of MRP–335, Revision 3–A. Therefore, the NRC proposes to revise this condition to prohibit the deferral of examinations of peened welds, without the submission of a plant-specific proposed alternative for NRC review and approval.

For welds mitigated with the excavate and weld repair technique, specifically inspection items M–2, N–1 and N–2, Note 11 of Table 1 of ASME BPV Code Case N–770–5 would allow the deferral of the second inservice examination to the end of the 10-year inservice inspection interval. The NRC finds the deferral of the second inservice exam unacceptable. If a weld was mitigated near the end of a 10-year inservice inspection interval, the first post mitigation examination might occur at the beginning of the next 10-year inservice inspection interval. Since the welds are required to be examined once per interval, the second post mitigation exam would be in the next interval. Because Note 11 allows the exams to be deferred, in such cases, it could approach twenty years between the first and second post mitigation exams. The NRC finds that a requirement to perform a second post mitigation exam within 10 years of the initial post mitigation exam to be more consistent with the reinspection timeline for other mitigations, such as full structural weld overlay and is therefore acceptable to the NRC. However, the NRC finds that, after the initial and second post mitigation examinations, provided the examination volumes show no indications of crack growth or new cracking, allowance for deferral of examination of these welds, as deemed appropriate, by the plant owner is

acceptable. As such, this proposed condition only restricts the deferral of the second inservice examination.

Given the two new issues identified above, the NRC proposes to revise NRC Condition § 50.55a (g)(6)(ii)(F)(9) *Deferral* to prohibit the deferral of volumetric inspections of welds mitigated by peening under MRP–335, Revision 3–A and the first 10-year inservice inspection examination for welds mitigated by the excavate and weld repair technique, inspection items M–2, N–1 and N–2 only.

10 CFR 50.55a(g)(6)(ii)(F)(10) Examination Technique

The NRC proposes to revise this condition to make an editorial change to update the reference to ASME BPV Code Case N–770–2 to N–770–5.

10 CFR 50.55a(g)(6)(ii)(F)(11) Cast Stainless Steel

The NRC proposes to amend § 50.55a(g)(6)(ii)(F)(11) to provide licensees with an alternative to meeting the current condition. The alternative would be to use ASME Code Case N–824 when examining dissimilar metal welds where inspections through a cast austenitic stainless steel component is required. The existing condition requires licensees to have a qualified program in place to inspect dissimilar metal butt welds with CASS materials from the CASS side by 2022. The NRC recognizes that there is no current Supplement 9 inspection guideline that would meet this requirement. At an NRC public meeting on April 17, 2018, the NRC and industry representatives discussed the estimated number of welds that would be covered by the condition. Given this information, the NRC has determined that rather than requiring a full qualification program to be developed within this timeframe, ASME Code Case N–824 would provide an acceptable alternative and provide reasonable assurance of public health and safety.

ASME BPV Code Case N–824 incorporates best practices for the inspection of cast stainless steel from NUREG/CR–7122 and NUREG/CR–6933. NUREG/CR–7122 showed that pressurizer surge line sized piping welds may be inspectable with existing dissimilar metal butt weld inspection procedures. NUREG/CR–6933 showed that large-bore cast stainless steel may be inspectable using specialized low-frequency inspection procedures. Therefore, the NRC will modify the condition to allow the use of ASME Code Case N–824, as conditioned in RG 1.147, as an option to the development of Appendix VIII, Supplement 9 or similar qualifications, or, when examining dissimilar metal welds where inspections through a cast austenitic stainless steel component is required to obtain volumetric inspection coverage.

10 CFR 50.55a(g)(6)(ii)(F)(13) Encoded Ultrasonic Examination

The NRC proposes to revise this current condition, which requires the encoded examination of unmitigated and mitigated cracked butt welds under the scope of ASME BPV Code Case N–770–5. In particular, the proposed revision is being expanded to address changes in ASME BPV Code Case N–770–5 to include inspection categories B–1, B–2 for cold leg welds, which were previously under the single inspection category B, and the new inspection categories N–1, N–2 and O for cracked welds mitigated with the excavate and weld repair technique. The inclusion of these weld categories is in line with the previous basis for this condition.

Further, the NRC proposes to relax the requirement for 100 percent of the required inspection volume to be encoded. The new requirement would allow essentially 100 percent of the required inspection volume to be encoded under the definition of essentially 100 percent in ASME BPV Code Case N–460. This code case allows the reduction to 90 percent coverage only if a physical limitation or impediment to full coverage is encountered during the inspection. The NRC finds this relaxation appropriate, given the potential that the physical size of the encoding equipment may reduce attainable coverage, when compared to manual techniques. The NRC staff finds that the reduction in safety associated with this potential minor decrease in coverage is minimal. Adoption of the revised proposed condition will reduce unnecessary preparation and submittal of requests for NRC review and approval of alternatives to this requirement.

10 CFR 50.55a(g)(6)(ii)(F)(14) Excavate and Weld Repair Cold Leg

The NRC proposes to add a new condition to address the initial inspection of cold leg operating temperature welds after being mitigated by the excavate and weld repair technique. The excavate and weld repair technique is a new mitigation category introduced in ASME BPV Code Case N–770–5. The first inspection requirement for inspection item M–2, N–1 and N–2 welds, after being mitigated, is during the 1st or 2nd refueling outages after mitigation. The NRC finds that the ASME BPV Code Case N–770–5 language does not provide separate inspection programs between the cold leg and the hot leg temperature for the first volumetric inspection. The NRC determines that, at hot leg temperatures, one fuel cycle is sufficient for a preexisting, nondetectable, crack to grow to detectable size (10 percent through wall). However, at cold leg temperatures, crack growth is sufficiently slow that preexisting, undetected, cracks are unlikely to reach detectable size in a single fuel cycle. Therefore, in order to ensure the effectiveness of the initial volumetric examination to verify no unanticipated flaw growth in the mitigated weld prior to extending the inspection frequency to 10 years or beyond, the NRC proposes to add a condition to require the first examination to be performed during the second refueling outage following the mitigation of cold leg operating temperature welds.

10 CFR 50.55a(g)(6)(ii)(F)(15) Cracked Excavate and Weld Repair

The NRC proposes to add a new condition to address the long-term inspection frequency of cracked welds mitigated by the excavate and weld repair technique, *i.e.* inspection category N–1. The long-term volumetric inspection frequency for the cracked N–1 welds under ASME BPV Code Case N–770–5 is a 25 percent sample each 10-year inspection interval. In comparison, the NRC notes that the long-term volumetric inspection frequency of a non-cracked weld mitigated with the excavate and weld repair technique without stress improvement (inspection category M–2) is 100 percent each 10-year inspection interval. Due to not attaining surface stress improvement, M–2 welds could potentially have cracking initiate at any time over the remaining life of the repair. Therefore, a volumetric inspection frequency of once per 10-year inspection frequency is warranted to verify weld structural integrity. However, every N–1 categorized weld already has a pre-existing crack, but Code Case N–770–5 would allow a 25 percent sample inspection frequency each 10-year inservice inspection interval. This could allow some N–1 welds with preexisting flaws to not be volumetrically inspected for the remainder of plant life. The NRC finds insufficient technical basis to support the difference in inspection frequency between N–1 and M–2 welds. Therefore, the NRC proposes a condition on N–1 inspection category welds that would require the same long-term inspection frequency, as that determined acceptable by the ASME BPV Code Case N–770–5 for M–2 welds, *i.e.,* non-cracked 360 degree excavate

and weld repair with no stress improvement credited.

10 CFR 50.55a(g)(6)(ii)(F)(16) Partial Arc Excavate and Weld Repair

The NRC proposes to add a new condition to prevent the use of the inspection criteria for partial arc excavate and weld repair technique contained in ASME BPV Code Case N–770–5. The NRC staff notes that ASME BPV Code Case N–847 which describes the process of installing an excavate and weld repair has not been included in RG 1.147 and has not been incorporated by reference into § 50.55a. As a result, licensees must propose an alternative to the ASME Code to make a repair using the excavate and weld repair technique. Therefore, preventing the use of the inspection criteria contained in ASME BPV Code Case N–770–5, proposes no additional burden on the licensee when viewed in light of the requirement to propose an alternative to the ASME BPV Code to use the excavate and weld repair technique. The NRC's basis for this condition is that initial research into stress fields and crack growth associated with the ends of the repair indicated that the potential for crack growth rates to exceed those expected in the absence of the repair. The NRC also notes that there is potential for confusion regarding the inspection interval for these welds associated with whether Note 5 can be applied.

**IV. Section-by-Section Analysis**

*Paragraph (a)(1)(i)*

This proposed rule would revise paragraph (a)(1)(i) by removing the abbreviation definition for ASME BPV Code in the first sentence.

*Paragraph (a)(1)(i)(E)*

This proposed rule would add new paragraphs (a)(1)(i)(E)(*18*) and (*19*) to include the 2015 and 2017 Editions of the ASME BPV Code.

*Paragraph (a)(1)(ii)*

This proposed rule would revise paragraphs (a)(1)(ii) to remove the acronym ''BPV'' and replace it with ''Boiler and Pressure Vessel.''

*Paragraph (a)(1)(ii)(C)*

This proposed rule would revise paragraphs (a)(1)(ii)(C)(52) and (53) to remove parenthetical language and would add new paragraphs (a)(1)(ii)(C)(54) and (55) to include the 2015 and 2017 Editions of the ASME BPV Code.

*Paragraph (a)(1)(iii)(C)*

This proposed rule would revise the reference from Code Case N–729–4 to N–729–6.

*Paragraph (a)(1)(iii)(D)*

This proposed rule would revise the reference from Code Case N–770–2 to N–770–5.

*Paragraph (a)(1)(iv)*

This proposed rule would remove parenthetical language from paragraph (a)(1)(iv).

*Paragraph (a)(1)(iv)(C)*

This proposed rule would add new paragraphs (a)(1)(iv)(C)(2) and (3) to include the 2015 and 2017 Editions of the ASME BPV Code.

*Paragraph (a)(4)*

This proposed rule would add a new paragraph (a)(4) to incorporate by reference the Electric Power Research Institute, Materials Reliability Program, 3420 Hillview Avenue, Palo Alto, CA 94304–1338; telephone: 1–650–855–2000; *http://www.epri.com.*

*Paragraph (a)(4)(i)*

This proposed rule would add a new paragraph (a)(4)(i) to incorporate by reference the Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement (MRP–335, Revision 3–A), EPRI approval date: November 2016. Paragraph (a)(4)(ii) would be added and resereved.

*Paragraph (b)(1)*

This proposed rule would change the reference from the 2013 to the 2017 Edition of the ASME BPV Code.

*Paragraph (b)(1)(ii)*

This proposed rule would change the word ''Note'' to ''Footnote'' in Table 1 of paragraph (b)(1)(ii) and revise the last reference in the table from the 2013 Edition to the 2017 Edition of the ASME BPV Code.

*Paragraph (b)(1)(iii)*

This proposed rule would change the references from the 2008 Addenda to the 2017 Edition of the ASME BPV Code.

*Paragraph (b)(1)(v)*

This proposed rule would revise paragraph (b)(1)(v) to limit the condition so that it applies only for the 1995 Edition through the 2009b Addenda of the 2007 Edition, where the NQA–1–1994 Edition is incorporated by reference in paragraph (a)(1) of this section.

*Paragraph (b)(1)(vi)*

This proposed rule would revise paragraph (b)(1)(vi) to replace ''the latest edition and addenda'' with ''all editions and addenda up to and including the 2013 Edition.''

*Paragraph (b)(1)(vii)*

This proposed rule would revise paragraph (b)(1)(vii) to replace ''the 2013 Edition'' with ''all editions and addenda up to and including the 2017 Edition.''

*Paragraph (b)(1)(x)*

This proposed rule would add new paragraph (b)(1)(x) and its subparagraphs (A) and (B) to include two conditions necessary to maintain adequate standards for visual examinations of bolts, studs, and nuts.

*Paragraph (b)(1)(xi)*

This proposed rule would add new paragraph (b)(1)(xi) and its subparagraphs (A) through (E) to include five conditions that are necessary to install safety-related Class 3 HDPE pressure piping in accordance with ASME BPV Code, Section III, Mandatory Appendix XXVI. The first two conditions apply to the 2015 and 2017 Editions of Section III. The third, fourth, and fifth conditions apply only to the 2017 Edition of Section III.

*Paragraph (b)(1)(xii)*

This proposed rule would add new paragraph (b)(1)(xii) which applies to the use of certifying engineers.

*Paragraph (b)(2)*

This proposed rule would revise paragraph (b)(2) to change the reference from the 2013 Edition to the 2017 Edition of the ASME BPV Code.

*Paragraph (b)(2)(vi)*

This proposed rule would remove and reserve paragraph (b)(2)(vi).

*Paragraph (b)(2)(vii)*

This proposed rule would remove and reserve paragraph (b)(2)(vii).

*Paragraph (b)(2)(ix)*

This proposed rule would revise paragraph (b)(2)(ix) to add references to new paragraph (b)(2)(ix)(K) of this section, where applicable. It would also replace ''the latest edition and addenda'' with ''the 2015 Edition.''

*Paragraph (b)(2)(ix)(K)*

This proposed rule would add new paragraph (b)(2)(ix)(K) to require visual examination of the moisture barrier materials installed in containment leak chase channel system closures at

concrete floor interfaces. This condition will be applicable to all editions and addenda of Section XI, Subsection IWE, of the ASME BPV Code, prior to the 2017 Edition, that are incorporated by reference in paragraph (b) of this section.

*Paragraph (b)(2)(xvii)*

This proposed rule would remove and reserve paragraph (b)(2)(xvii).

*Paragraph (b)(2)(xviii)(D)*

This proposed rule would revise paragraph (b)(2)(xviii)(D) to extend the applicability to users of the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section.

*Paragraph (b)(2)(xx)(B)*

This proposed rule would revise paragraph (b)(2)(xx)(B) to clarify the NRC's expectations for system leakage tests performed in lieu of a hydrostatic pressure test, following repair/replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda of ASME BPV Code, Section XI incorporated by reference in paragraph (a)(1)(ii) of this section.

*Paragraph (b)(2)(xx)(C)*

This proposed rule would add new paragraph (b)(2)(xx)(C) and subparagraphs (1) and (2) to include two conditions on the use of the alternative BWR Class 1 system leakage test described in IWA–5213(b)(2), IWB–5210(c) and IWB–5221(d) of the 2017 Edition of ASME BPV Code, Section XI.

*Paragraph (b)(2)(xxi)(A)*

This proposed rule would remove and reserve paragraph (b)(2)(xxi)(A).

*Paragraph (b)(2)(xxi)(B)*

This proposed rule would add new paragraph (b)(2)(xxi)(B) and its subparagraphs (1) through (3) that will include conditions on the use of the provisions of IWB–2500(f) and (g) and Notes 6 and 7 of Table IWB–2500–1 of the 2017 Edition of ASME BPV Code, Section XI.

*Paragraph (b)(2)(xxv)*

This proposed rule would revise paragraph (b)(2)(xxv) introductory text and add new subparagraphs (A) and (B) that would prohibit the use of IWA–4340 in Section XI editions and addenda earlier than the 2011 Edition and would allow the use of IWA–4340 in addenda and editions from the 2011 Addenda through the latest edition incorporated by reference in this section under certain conditions.

*Paragraph (b)(2)(xxvi)*

This proposed rule would revise paragraph (b)(2)(xxvi) to clarify the NRC's expectations for pressure testing of ASME BPV Code Class 1, 2, and 3 mechanical joints disassembled and reassembled during the performance of an ASME BPV Code, Section XI activity.

*Paragraph (b)(2)(xxxii)*

This proposed rule would revise the reporting requirements in paragraph (b)(2)(xxxii).

*Paragraph (b)(2)(xxxiv)*

This proposed rule would revise paragraph (b)(2)(xxxiv) and its subparagraph (B) to extend the applicability from the 2013 Edition through the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section.

*Paragraph (b)(2)(xxxv)*

This proposed rule would revise paragraph (b)(2)(xxxv) to designate the introductory text of paragraph (b)(2)(xxxv) minus the paragraph heading as subparagraph (A) and it would also add new subparagraph (B).

*Paragraph (b)(2)(xxxvi)*

This proposed rule would revise the condition in paragraph (b)(2)(xxxvi) to also include the use of the 2015 and 2017 Editions of ASME BPV Code, Section XI.

*Paragraph (b)(2)(xxxviii)*

This proposed rule would add new paragraph (b)(2)(xxxviii) and its subparagraphs (A) and (B) that contain two conditions on the use of ASME BPV Code, Section XI, Appendix III, Supplement 2.

*Paragraph (b)(2)(xxxix)*

This proposed rule would add new paragraph (b)(2)(xxxix) and its subparagraphs (A) and (B) that contain conditions on the use of IWA–4421(c)(1) and IWA–4421(c)(2) of Section XI, in the 2017 Edition.

*Paragraph (b)(2)(xl)*

This proposed rule would add new paragraph (b)(2)(xl) to include the requirements for the prohibitions on the use of IWB–3510.4(b).

*Paragraph (b)(2)(xli)*

This proposed rule would add new paragraph (b)(2)(xli) to include the requirements for the prohibitions on the use of IWB–3112(a)(3) and IWC–3112(a).

*Paragraph (b)(2)(xlii)*

This proposed rule would add new paragraph (b)(2)(xlii) to include the requirements for the use of the provisions in Table IWB–2500–1, Examination Category B–F, Pressure Retaining Dissimilar Metal Welds in Vessel Nozzles, Item B5.11 and Item B5.71.

*Paragraph (b)(3)*

This proposed rule would revise paragraph (b)(3) to include Appendix IV in the list of Mandatory Appendices and it would also remove the reference to the ''2012 Edition'' and replace it with ''the latest edition and addenda of the ASME OM Code incorporated by reference.'' It would also revise the last sentence in the paragraph for clarity.

*Paragraph (b)(3)(ii)*

This proposed rule would revise paragraph (b)(3)(ii) to remove the reference to the ''2011 Addenda, and 2012 Edition'' and replace it with ''the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section.''

*Paragraph (b)(3)(iv)*

This proposed rule would revise paragraph (b)(3)(iv) to update the conditions for use of Appendix II of the ASME OM Code, 2003 Addenda through the 2015 Edition.

*Paragraph (b)(3)(viii)*

This proposed rule would revise paragraph (b)(3)(viii) to remove the reference to the ''2011 Addenda, or 2012 Edition'' and replace it with ''the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section.''

*Paragraph (b)(3)(ix)*

This proposed rule would revise paragraph (b)(3)(ix) to update the conditions for use of Subsection ISTF of the ASME OM Code, through the 2012 Edition or 2015 Edition.

*Paragraph (b)(3)(xi)*

This proposed rule would revise paragraph (b)(3)(xi) to extend the applicability of the reference to the ASME OM Code, 2012 Edition through the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv). It would also provide additional clarity regarding obturator positions for valves with remote position indication.

*Paragraph (b)(3)(xii)*

This proposed rule would add a new paragraph (b)(3)(xii) for air-operated valves (Appendix IV).

*Paragraphs (f)(4)(i) and (ii)*

This proposed rule would revise paragraphs (f)(4)(i) and (ii) to change the

time frame for complying with the latest edition and addenda of the ASME OM Code from 12 months to 18 months, both for the initial and successive IST programs.

*Paragraph (f)(7)*

This proposed rule would add new paragraph (f)(7) to include the requirements for inservice testing reporting.

*Paragraph (g)(4)*

This proposed rule would revise paragraph (g)(4) to remove the phrase ''subject to the condition referenced in paragraph (b)(2)(vi) of this section.''

*Paragraph (g)(4)(i)*

This proposed rule would revise paragraph (g)(4)(i) to change the time frame for complying with the latest edition and addenda of the ASME BPV Codes, from 12 months to 18 months, for ISI programs.

*Paragraph (g)(4)(ii)*

This proposed rule would revise paragraph (g)(4)(ii) to change the time frames for complying with the latest edition and addenda of the ASME BPV Codes, from 12 months to 18 months, for successive ISI programs. It also would remove the date of August 17, 2017, and replace that date with the effective date of the final rule.

*Paragraph (g)(6)(ii)(C)*

This proposed rule would remove and reserve paragraph (g)(6)(ii)(C).

*Paragraph (g)(6)(ii)(D)(1)*

This proposed rule would revise paragraph (g)(6)(ii)(D)(*1*) to remove the date of August 17, 2017, and replace that date with the effective date of the final rule. It would also update the reference from Code Case N–729–4 to Code Case N–729–6. It would also be revised to include the conditions in paragraphs (*2*) through (*8*) and that licensees must be in compliance with these conditions by no later than 1 year from the effective date of the final rule.

*Paragraph (g)(6)(ii)(D)(2)*

This proposed rule would revise paragraph (g)(6)(ii)(D)(*2*) in its entirety.

*Paragraph (g)(6)(ii)(D)(4)*

This proposed rule would revise paragraph (g)(6)(ii)(D)(*4*) to update the reference to ASME BPV Code Case N–729 from revision 4 to revision 6.

*Paragraphs (g)(6)(ii)(D)(5) through (8)*

This proposed rule would add new paragraphs (g)(6)(ii)(D)(*5*) through (*8*) to include the requirements for peening, baseline examinations, sister plants, and volumetric leak path.

*Paragraph (g)(6)(ii)(F)(1)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*1*) to remove the date of August 17, 2017, and replace that date with the effective date of the final rule. It would also update the reference from Code Case N–770–2 (revision 2) to Code Case N–770–5 (revision 5). It would also be revised to include the conditions in paragraphs (g)(6)(ii)(F)(*2*) through (*16*) of this section and that licensees must be in compliance with these conditions by no later than 1 year from the effective date of the final rule.

*Paragraph (g)(6)(ii)(F)(2)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*2*) to include subparagraphs (i) through (v).

*Paragraph (g)(6)(ii)(F)(3)*

This proposed rule would remove and reserve paragraph (g)(6)(ii)(F)(*3*).

*Paragraph (g)(6)(ii)(F)(4)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*4*) to change the reference from ASME BPV Code Case N–770–2 (revision 2) to Code Case N–770–5 (revision 5).

*Paragraph (g)(6)(ii)(F)(6)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*6*) to provide greater clarity of the requirements that must be met.

*Paragraph (g)(6)(ii)(F)(9)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*9*) to include subparagraphs (i) through (iii).

*Paragraph (g)(6)(ii)(F)(10)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*10*) from ASME BPV Code Case N–770–2 (revision 2) to N–770–5 (revision 5).

*Paragraph (g)(6)(ii)(F)(11)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*11*) to include an alternative to meeting the current condition.

*Paragraph (g)(6)(ii)(F)(13)*

This proposed rule would revise paragraph (g)(6)(ii)(F)(*13*) to include inspection categories B–1, B–2, N–1, N–2 and O.

*Paragraph (g)(6)(ii)(F)(14) through (16)*

This proposed rule would add new paragraphs (g)(6)(ii)(F)(*14*) through (*16*) to contain the new requirements: Excavate and weld repair cold leg, cracked excavate and weld repair, and partial arc excavate and weld repair.

**V. Generic Aging Lessons Learned Report**

*Background*

In December 2010, the NRC issued ''Generic Aging Lessons Learned (GALL) Report,'' NUREG–1801, Revision 2 (ADAMS Accession No. ML103490041), for applicants to use in preparing license renewal applications. The GALL report provides aging management programs (AMPs) that the NRC has concluded are sufficient for aging management in accordance with the license renewal rule, as required in § 54.21(a)(3). In addition, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' NUREG–1800, Revision 2 (ADAMS Accession No. ML103490036), was issued in December 2010, to ensure the quality and uniformity of NRC staff reviews of license renewal applications and to present a well-defined basis on which the NRC staff evaluates the applicant's aging management programs and activities. In April 2011, the NRC also issued ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800,'' NUREG–1950 (ADAMS Accession No. ML11116A062), which describes the technical bases for the changes in Revision 2 of the GALL report and Revision 2 of the standard review plan (SRP) for review of license renewal applications.

Revision 2 of the GALL report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.M5, XI.M6, XI.M11B and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the period of extended operation (*i.e.,* up to 60 years of operation). In addition, many other AMPs in the GALL report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. Revision 2 of the GALL report also states that the 1995 Edition through the 2004 Edition of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as modified and limited by § 50.55a, were found to be acceptable editions and addenda for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL report. The GALL report further states that future **Federal Register** documents that amend § 50.55a will discuss the acceptability of editions

and addenda more recent than the 2004 Edition for their applicability to license renewal. In a final rule issued on June 21, 2011 (76 FR 36232), subsequent to Revision 2 of the GALL report, the NRC also found that the 2004 Edition with the 2005 Addenda through the 2007 Edition with the 2008 Addenda of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL report and the conclusions of the GALL report remain valid with the augmentations specifically noted in the GALL report. In a final rule issued on July 18, 2017 (82 FR 32934), the NRC further finds that the 2009 Addenda through the 2013 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, will be acceptable for the AMPs in the GALL report.

In July 2017, the NRC issued ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' NUREG–2191 (ADAMS Accession Nos. ML17187A031 and ML17187A204), for applicants to use in preparing applications for subsequent license renewal. The GALL–SLR report provides AMPs that are sufficient for aging management for the subsequent period of extended operation (*i.e.,* up to 80 years of operation), as required in § 54.21(a)(3). The NRC also issued ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' (SRP–SLR), NUREG–2192 in July 2017 (ADAMS Accession No. ML17188A158). In a similar manner as the GALL report does, the GALL–SLR report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.11B, and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the subsequent period of extended operation. Many other AMPs in the GALL–SLR report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. The GALL–SLR report also indicates that the 1995 Edition through the 2013 Edition of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL–SLR report.

*Evaluation With Respect to Aging Management*

As part of this proposed rule, the NRC evaluated whether those AMPs in the GALL report and GALL–SLR report which rely upon Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI in the editions and addenda of the ASME BPV Code incorporated by reference into § 50.55a, in general continue to be acceptable if the AMP relies upon these Subsections in the 2015 Edition and the 2017 Edition. In general the NRC finds that the 2015 Edition and the 2017 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions of this proposed rule, are acceptable for the AMPs in the GALL report and GALL–SLR report and the conclusions of the GALL report and GALL–SLR report remain valid with the exception of augmentation, specifically noted in those reports. Accordingly, an applicant for license renewal (including subsequent license renewal) may use, in its plant-specific license renewal application, Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2015 Edition and the 2017 Edition of the ASME BPV Code, as subject to the conditions in this proposed rule, without additional justification. Similarly, a licensee approved for license renewal that relied on the AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2015 Edition and the 2017 Edition of the ASME BPV Code. However, applicants must assess and follow applicable NRC requirements with regard to licensing basis changes and evaluate the possible impact on the elements of existing AMPs.

Some of the AMPs in the GALL report and GALL–SLR report recommend augmentation of certain Code requirements in order to ensure adequate aging management for license renewal. The technical and regulatory aspects of the AMPs for which augmentations are recommended also apply if the 2015 Edition and the 2017 Edition of Section XI of the ASME BPV Code are used to meet the requirements of § 54.21(a)(3). The NRC staff evaluated the changes in the 2015 Edition and the 2017 Edition of Section XI of the ASME BPV Code to determine if the augmentations described in the GALL report and GALL–SLR report remain necessary; the NRC staff's evaluation has concluded that the augmentations described in the GALL and GALL–SLR reports are necessary to ensure adequate aging management.

For example, GALL–SLR report AMP XI.S3, ''ASME Section XI, Subsection IWF'', recommends that volumetric examination consistent with that of ASME BPV Code, Section XI, Table IWB–2500–1, Examination Category B–G–1 should be performed to detect cracking for high strength structural bolting (actual measured yield strength greater than or equal to 150 kilopound per square inch (ksi)) in sizes greater than 1 inch nominal diameter. The GALL–SLR report also indicates that this volumetric examination may be waived with adequate plant-specific justification. This guidance for aging management in the GALL–SLR report is the augmentation of the visual examination specified in Subsection IWF of the 2015 Edition and the 2017 Edition of ASME BPV Code, Section XI.

A license renewal applicant may either augment its AMPs as described in the GALL report and GALL–SLR report (for operation up to 60 and 80 years respectively), or propose alternatives for the NRC to review as part of the applicant's plant-specific justification for its AMPs.

## VI. Specific Request for Comment

The NRC is considering changes to § 50.55a(g)(6)(ii)(D) *Augmented ISI requirements: Reactor vessel head inspections.* As previously discussed in the document, the NRC proposes to add a new condition to address the use of the term ''sister plants'' for the examinations of RPV upper heads. The use of sister plants under ASME BPV Code Case N–729–6 would allow extension of the volumetric inspection of replaced RPV heads with resistant materials from the current 10-year inspection frequency to a period of up to 40 years. The NRC is proposing a condition to prohibit the use of the concept of sister plants. The NRC is evaluating both the definition of sister plants and factors of improvement between the growth of PWSCC in alloys 600/82/182 and 690/52/152. It is unclear whether the current criteria for sister plants (*i.e.,* same owner) are appropriate. The NRC also questions whether other criteria, such as environment, alloy heat, and number of sisters in a particular group, should be included in the definition. The NRC continues to review information on PWSCC growth rates and factors of improvement for alloy 690/52/152 and 600/82/182 as proposed in MRP–386. While the NRC has concluded that crack growth in alloy 690/52/152 is sufficiently slower than in alloy 600/82/182 to support an inspection interval of 20 years, work continues in assessing whether the data and analyses support a 40-year interval.

The NRC is interested in receiving public input that addresses whether there are reasonable changes to the definition of the term ''sister plants'' that would better identify heads with enough material similarities such that examination of one head can be representative of all others in the group.

**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 comment on this document with respect to the clarity and effectiveness of the language used.

**VIII. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113 (NTTAA), and implementing guidance in U.S. Office of Management and Budget (OMB) Circular A–119 (February 10, 1998), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NTTAA requires Federal agencies to use industry consensus standards to the extent practical; it does not require Federal agencies to endorse a standard in its entirety. Neither the NTTAA nor Circular A–119 prohibit an agency from adopting a voluntary consensus standard while taking exception to specific portions of the standard, if those provisions are deemed to be ''inconsistent with applicable law or otherwise impractical.'' Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions that are not acceptable to the agency.

In this proposed rule, the NRC is continuing its existing practice of establishing requirements for the design, construction, operation, ISI (examination) and IST of nuclear power plants by approving the use of the latest editions and addenda of the ASME BPV and OM Codes (ASME Codes) in § 50.55a. The ASME Codes are voluntary consensus standards, developed by participants with broad and varied interests, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. Therefore, the NRC's incorporation by reference of the ASME Codes is consistent with the overall objectives of the NTTAA and OMB Circular A–119.

As discussed in Section III of this document, this proposed rule would condition the use of certain provisions of the 2015 and 2017 Editions to the ASME BPV Code, Section III, Division 1 and the ASME BPV Code, Section XI, Division 1, as well as the 2015 and 2017 Editions to the ASME OM Code. In addition, the NRC is proposing to not adopt (''excludes'') certain provisions of the ASME Codes as discussed in this document, and in the regulatory and backfit analysis for this proposed rule. The NRC believes that this proposed rule complies with the NTTAA and OMB Circular A–119 despite these conditions and ''exclusions.''

If the NRC did not conditionally accept ASME editions, addenda, and code cases, the NRC would disapprove them entirely. The effect would be that licensees and applicants would submit a larger number of requests for the use of alternatives under § 50.55a(z), requests for relief under § 50.55a(f) and (g), or requests for exemptions under § 50.12 and/or § 52.7. These requests would likely include broad-scope requests for approval to issue the full scope of the ASME Code editions and addenda which would otherwise be approved as proposed in this proposed rule (*i.e.,* the request would not be simply for approval of a specific ASME Code provision with conditions). These requests would be an unnecessary additional burden for both the licensee and the NRC, inasmuch as the NRC has already determined that the ASME Codes and Code Cases that are the subject of this proposed rule are acceptable for use (in some cases with conditions). For these reasons, the NRC concludes that this proposed rule's treatment of ASME Code editions and addenda, and code cases and any conditions placed on them does not conflict with any policy on agency use of consensus standards specified in OMB Circular A–119.

The NRC did not identify any other voluntary consensus standards developed by U.S. voluntary consensus standards bodies for use within the U.S. that the NRC could incorporate by reference instead of the ASME Codes. The NRC also did not identify any voluntary consensus standards developed by multinational voluntary consensus standards bodies for use on a multinational basis that the NRC could incorporate by reference instead of the ASME Codes. The NRC identified codes addressing the same subject as the ASME Codes for use in individual countries. At least one country, Korea, directly translated the ASME Code for use in that country. In other countries (*e.g.,* Japan), ASME Codes were the basis for development of the country's codes, but the ASME Codes were substantially modified to accommodate that country's regulatory system and reactor designs. Finally, there are countries (*e.g.,* the Russian Federation) where that country's code was developed without regard to the ASME Code. However, some of these codes may not meet the definition of a voluntary consensus standard because they were developed by the state rather than a voluntary consensus standards body. Evaluation by the NRC of the countries' codes to determine whether each code provides a comparable or enhanced level of safety when compared against the level of safety provided under the ASME Codes would require a significant expenditure of agency resources. This expenditure does not seem justified, given that substituting another country's code for the U.S. voluntary consensus standard does not appear to substantially further the apparent underlying objectives of the NTTAA.

In summary, this proposed rule satisfies the requirements of the NTTAA and OMB Circular A–119.

**IX. Incorporation by Reference—Reasonable Availability to Interested Parties**

The NRC proposes to incorporate by reference four recent editions to the ASME Codes for nuclear power plants and two revised ASME Code Cases. As described in the ''Background'' and ''Discussion'' sections of this document, these materials contain standards for the design, fabrication, and inspection of nuclear power plant components. The NRC also proposes to incorporate by reference an EPRI Topical Report. As described in the ''Background'' and ''Discussion'' sections of this document, this report contains proposed requirements related to the two revised ASME Code Cases.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are

reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in § 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for the purposes of determining whether the material is ''reasonably available.'' The NRC considers the following to be classes of interested parties in NRC rulemakings with regard to the material to be incorporated by reference:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, ''small entities'' has the same meaning as a ''small entity'' under § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, ''large entities'' are those which do not qualify as a ''small entity'' under § 2.810.
- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, states, local governmental bodies (within the meaning of § 2.315(c)).
- Federally-recognized and State-recognized [4] Indian tribes.
- Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who may wish to gain access to the materials which the NRC proposes to incorporate by reference by rulemaking in order to participate in the rulemaking process.

[4] State-recognized Indian tribes are not within the scope of § 2.315(c). However, for purposes of the NRC's compliance with 1 CFR 51.5, ''interested parties'' includes a broad set of stakeholders, including State-recognized Indian tribes.

The NRC makes the materials to be incorporated by reference available for inspection to all interested parties, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov.*

Interested parties may obtain a copy of the EPRI Topical Report free of charge from EPRI from their website at *www.epri.com.*

Interested parties may purchase a copy of the ASME materials from ASME at Three Park Avenue, New York, NY 10016, or at the ASME website *https://www.asme.org/shop/standards.* The materials are also accessible through third-party subscription services such as IHS (15 Inverness Way East, Englewood, CO 80112; *https://global.ihs.com*) and Thomson Reuters Techstreet (3916 Ranchero Dr., Ann Arbor, MI 48108; *http://www.techstreet.com*). The purchase prices for individual documents range from $225 to $720 and the cost to purchase all documents is approximately $9,000.

For the class of interested parties constituting members of the general public who wish to gain access to the materials to be incorporated by reference in order to participate in the rulemaking, the NRC recognizes that the $9,000 cost may be so high that the materials could be regarded as not reasonably available for purposes of commenting on this rulemaking, despite the NRC's actions to make the materials available at the NRC's PDR. Accordingly, the NRC sent a letter to the ASME requesting that they consider enhancing public access to these materials during the public comment period (ADAMS Accession No. ML17310A186). In a May 30, 2018, email to the NRC, the ASME agreed to make the materials available online in a read-only electronic access format during the public comment period (ADAMS Accession No. ML18157A113). Therefore, the four editions to the ASME Codes for nuclear power plants, and the two ASME Code Cases which the NRC proposes to incorporate by reference in this rulemaking are available in read-only format at the ASME website *http://go.asme.org/NRC.*

The NRC concludes that the materials the NRC proposes to incorporate by reference in this proposed rule are reasonably available to all interested parties because the materials are available to all interested parties in multiple ways and in a manner consistent with their interest in the materials.

## X. Environmental Assessment and Final Finding of No Significant Environmental Impact

This proposed rule action is in accordance with the NRC's policy to incorporate by reference in § 50.55a new editions and addenda of the ASME BPV and OM Codes to provide updated rules for constructing and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. The ASME Codes are national voluntary consensus standards and are required by the NTTAA to be used by government agencies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The National Environmental Policy Act (NEPA) requires Federal agencies to study the impacts of their ''major Federal actions significantly affecting the quality of the human environment,'' and prepare detailed statements on the environmental impacts of the proposed action and alternatives to the proposed action (42 U.S.C. 4332(C); NEPA Sec. 102(C)).

The NRC has determined under NEPA, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, that this proposed rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rulemaking does not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off-site, and there is no significant increase in public radiation exposure. The NRC concludes that the increase in occupational exposure would not be significant. This proposed rule does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with this action. The determination of this environmental assessment is that there will be no significant off-site impact to the public from this action. Therefore, a finding of no significant impacts (FONSI) is appropriate.

## XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

*Type of submission, new or revision:* Revision.

*The title of the information collection:* Domestic Licensing of Production and Utilization Facilities: Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases.

*The form number if applicable:* Not applicable.

*How often the collection is required or requested:* On occasion.

*Who will be required or asked to respond:* Power reactor licensees and applicants for power reactors under construction.

*An estimate of the number of annual responses:* −53.

*The estimated number of annual respondents:* 103.

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* −12,640.

*Abstract:* This proposed rule is the latest in a series of rulemakings to amend the NRC's regulations to incorporate by reference revised and updated ASME Codes for nuclear power plants. The number of operating nuclear power plants has decreased and the NRC has increased its estimate of the burden associated with developing alternative requests. Overall, the reporting burden for § 50.55a has increased.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of the burden of the proposed 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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS (Accession Nos. ML18150A267 and ML18150A265) or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on *http://www.regulations.gov* under Docket ID NRC–2016–0082.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the previously stated issues, by the following methods:

- *Federal Rulemaking website*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0082.
- *Mail comments to:* Information Services Branch, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0011), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

Submit comments by December 10, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**Public Protection Notification**

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

**XII. Regulatory Analysis**

The NRC has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The NRC requests public comments on the draft regulatory analysis, (ADAMS Accession No. ML18150A267). Comments on the draft analysis may be submitted to the NRC by any method provided in the **ADDRESSES** section of this document.

**XIII. Backfitting and Issue Finality**

*Introduction*

The NRC's Backfit Rule in § 50.109 states that the NRC shall require the backfitting of a facility only when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Any of these modifications or additions may result from a new or amended provision in the NRC's rules or the imposition of a regulatory position interpreting the NRC's rules that is either new or different from a previously applicable NRC position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to:

- Construct ASME BPV Code Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code (''Section III'').
- Inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code (''Section XI'').
- Test Class 1, 2, and 3 pumps, valves, and dynamic restraints (snubbers) in accordance with the rules provided in the ASME OM Code.

This rulemaking proposes to incorporate by reference the 2015 and 2017 Editions to the ASME BPV Code, Section III, Division 1 and ASME BPV Code, Section XI, Division 1, as well as the 2015 and 2017 Editions to the ASME OM Code.

The ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. A consensus process involving a wide range of stakeholders is consistent with the NTTAA, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, ISI, and IST by rulemaking. The process also facilitates early stakeholder consideration of backfitting issues. Thus, the NRC believes that the NRC need not address backfitting with respect to the NRC's general practice of incorporating by reference updated ASME Codes.

*Overall Backfitting Considerations: Section III of the ASME BPV Code*

Incorporation by reference of more recent editions and addenda of Section III of the ASME BPV Code does not affect a plant that has received a construction permit or an operating license or a design that has been approved. This is because the edition and addenda to be used in constructing a plant are, under § 50.55a, determined based on the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. The incorporation by reference of more recent editions and addenda of Section III ordinarily applies only to applicants after the effective date of the final rule incorporating these new editions and

addenda. Thus, incorporation by reference of a more recent edition and addenda of Section III does not constitute ''backfitting'' as defined in § 50.109(a)(1).

*Overall Backfitting Considerations: Section XI of the ASME BPV Code and the ASME OM Code*

Incorporation by reference of more recent editions and addenda of Section XI of the ASME BPV Code and the ASME OM Code affects the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV Code (Section XI) and OM Code. As previously mentioned, the NRC's longstanding regulatory practice has been to incorporate later versions of the ASME Codes into § 50.55a. Under § 50.55a, licensees shall revise their ISI and IST programs every 120 months to the latest edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a 12 months before the start of a new 120-month ISI and IST interval. Thus, when the NRC approves and requires the use of a later version of the Code for ISI and IST, it is implementing this longstanding regulatory practice and requirement.

Other circumstances where the NRC does not apply the Backfit Rule to the approval and requirement to use later Code editions and addenda are as follows:

1. When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later Code provision, limits the use of the later Code provision, or supplements the provisions in a later Code. The Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the Code in the Statement of Considerations and regulatory analysis for the rule.

2. When an NRC exception relaxes an existing ASME BPV Code or OM Code provision but does not prohibit a licensee from using the existing Code provision. The Backfit Rule does not apply because the NRC is not imposing new requirements.

3. Modifications and limitations imposed during previous routine updates of § 50.55a have established a precedent for determining which modifications or limitations are backfits, or require a backfit analysis (*e.g.,* final rule dated September 10, 2008 [73 FR 52731], and a correction dated October 2, 2008 [73 FR 57235]). The application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

The incorporation by reference and adoption of a requirement mandating the use of a later ASME BPV Code or OM Code may constitute backfitting in some circumstances. In these cases, the NRC would perform a backfit analysis or documented evaluation in accordance with § 50.109. These include the following:

1. When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit (*e.g.,* 61 FR 41303; August 8, 1996).

2. When the NRC requires implementation of a later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language (*e.g.,* 64 FR 51370; September 22, 1999).

3. When the NRC takes an exception to an ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different from the later Code (*e.g.,* 67 FR 60529; September 26, 2002).

*Detailed Backfitting Discussion: Proposed Changes Beyond Those Necessary To Incorporate by Reference the New ASME BPV and OM Code Provisions*

This section discusses the backfitting considerations for all the proposed changes to § 50.55a that go beyond the minimum changes necessary and required to adopt the new ASME Code Addenda into § 50.55a.

ASME BPV Code, Section III

1. Add § 50.55a(b)(1)(x) to require compliance with two new conditions related to visual examination of bolts studs and nuts. Visual examination is one of the processes for acceptance of the final product to ensure its structural integrity and its ability to perform its intended function. The 2015 Edition of the ASME Code contains requirements for visual inspection of these components, however, the 2017 Edition does not require these visual examinations to be performed in accordance with NX–5100 and NX–5500. Therefore, the NRC proposes to add two conditions to ensure adequate procedures remain and qualified personnel remain capable of determining the structural integrity of these components. Since the proposed conditions restore requirements that were removed from the latest edition of the ASME Code, the proposed conditions does not constitute a new or changed NRC position. Therefore, the revision of this condition is not a backfit

2. Add § 50.55a(b)(1)(xi) to require conditions on the use of ASME BPV Code, Section III, Appendix XXVI for installation of high density polyethylene (HDPE) pressure piping. This Appendix is new in the 2015 Edition of Section III, since it is the first time the ASME BPV Code has provided rules for the use of polyethylene piping. The use of HDPE is newly allowed by the Code, which provides alternatives to the use of current materials. Therefore, this proposed change is not a backfit.

3. Add § 50.55a(b)(1)(xii) to prohibit applicants and licensees from using a certifying engineer in lieu of a registered professional engineer for code related activities that are applicable to U.S. nuclear facilities regulated by the NRC. In the 2017 Edition of ASME BPV Code, Section III, Subsection NCA, the several Subsections were updated to replace the term ''registered professional engineer,'' with term ''certifying engineer'' to be consistent with ASME BPV Code Section III Mandatory Appendix XXIII.

The NRC reviewed these changes and has determined that the use of a certifying engineer in lieu of a registered professional engineer is only applicable for non-U.S. nuclear facilities. Since the use of a certifying engineer is newly allowed by the Code, the addition of the condition that prohibits the use of a certifying engineer in lieu of a registered professional engineer for code related activities is not a backfit.

ASME BPV Code, Section XI

1. Revise § 50.55a(b)(2)(ix) to require compliance with new condition § 50.55a(b)(2)(ix)(K). The NRC has developed proposed condition § 50.55a(b)(2)(ix)(K) to ensure containment leak-chase channel systems are properly inspected. This condition serves to clarify the NRC's existing expectations, as described in inspection reports and IN 2014–07, and will be applicable to all editions of the ASME Code, prior to the 2017 Edition. The NRC considers this condition a clarification of the existing expectations and, therefore, does not consider this condition a backfit.

As noted previously, after issuance of the IN, the NRC received feedback during an August 22, 2014, public meeting between NRC and ASME

management (ADAMS Accession No. ML14245A003), noting that the IN guidance appeared to be in conflict with ASME Section XI Interpretation XI–1–13–10. In response to the comment during the public meeting, the NRC issued a letter to ASME (ADAMS Accession No. ML14261A051) which stated the NRC believes the IN is consistent with the requirements in the ASME Code and restated the existing NRC staff position. ASME responded to the NRC's letter (ADAMS Accession No. ML15106A627) and noted that a condition in the regulations may be appropriate to clarify the NRC staff's position.

2. Revise § 50.55a(b)(2)(xx)(B) to clarify the condition with respect to the NRC's expectations for system leakage tests performed in lieu of a hydrostatic pressure test following repair/replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda of ASME BPV Code, Section XI incorporated by reference in paragraph § 50.55a(a)(1)(ii). This provision requires the licensee perform the applicable nondestructive testing that would be required by the 1992 Edition or later of ASME BPV Code, Section III. The nondestructive examination method (*e.g.* surface, volumetric, etc.) and acceptance criteria of the 1992 Edition or later of Section III shall be met and a system leakage test be performed in accordance with IWA–5211(a). The actual nondestructive examination and pressure testing may be performed using procedures and personnel meeting the requirements of the licensee's/applicant's current ISI code of record required by § 50.55a(g)(4). The proposed condition does not constitute a new or changed NRC position. Therefore, the revision of this condition is not a backfit.

3. Add § 50.55a(b)(2)(xx)(C) to place two conditions on the use of the alternative BWR Class 1 system leakage test described in IWA–5213(b)(2), IWB–5210(c) and IWB–5221(d) of the 2017 Edition of ASME Section XI. This is a new pressure test allowed by the Code at a reduced pressure as an alternative to the pressure test currently required. This allows a reduction in the requirements which is consistent with several NRC-approved alternatives/relief requests. Therefore, this proposed change is not a backfit.

4. Add § 50.55a(b)(2)(xxi)(B) to require the plant-specific evaluation demonstrating the criteria of IWB–2500(f) are met be maintained in accordance with the Owners requirements, to prohibit use of the provisions of IWB–2500(f) and Table IWB–2500–1 Note 6 for of Examination Category B–D Item Numbers B3.90 and B3.100 for plants with renewed licenses and to restrict the provisions of IWB–2500(g) and Table IWB–2500–1 Notes 6 and 7 for examination of Examination Category B–D Item Numbers B3.90 and B3.100 use to eliminate the preservice or inservice volumetric examination of plants with a Combined Operating License pursuant to 10 CFR part 52, or a plant that receives its operating license after October 22, 2015. This proposed revision applies the current requirements for use of these provisions as currently described in ASME Code Case N–702, which are currently allowed through Regulatory Guide 1.147, Revision 19. Therefore, the NRC does not consider the clarification to be a change in requirements. Therefore, this proposed change is not a backfit.

5. Revise the condition found in § 50.55a(b)(2)(xxv) to allow the use of IWA–4340 of Section XI, 2011 Addenda through 2017 Edition with conditions.

Add § 50.55a(b)(2)(xxv)(A) which will continue the prohibition of IWA–4340 for Section XI editions and addenda prior to the 2011 Addenda. This prohibition applies the current requirements for use of these provision, therefore, the NRC does not consider the addition of § 50.55a(b)(2)(xxv)(A) to be a change in requirements. Therefore, this proposed change is not a backfit.

Add § 50.55a(b)(2)(xxv)(B) which will allow the use of IWA–4340 of Section XI, 2011 Addenda through 2017 Edition with three conditions.

- The first proposed condition would prohibit the use of IWA–4340 on crack-like defects or those associated with flow accelerated corrosion.

The design requirements and potentially the periodicity of followup inspections might not be adequate for crack-like defects that could propagate much faster than defects due to loss of material. Prior to the change to allow the use of IWA–4340, the provisions of this subsubarticle were not permitted for any type of defects. By establishment of the new conditions, the NRC proposes to allow the use of IWA–4340 for defects such as wall loss due to general corrosion. Establishing a condition to not allow the use of IWA–4340 for crack-like defects does not constitute a new or changed NRC position. Therefore, the revision of this condition associated with crack-like defects is not a backfit.

As established in NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report'', Revision 2, effective management of flow accelerated corrosion entails: (a) An analysis to determine critical locations, (b) limited baseline inspections to determine the extent of thinning at these locations, (c) use of a predictive Code (*e.g.,* CHECKWORKS); and (d) follow-up inspections to confirm the predictions, or repairing or replacing components as necessary. These provision are not included in IWA–4340. In addition, subparagraph IWA–4421(c)(2) provides provisions for restoring minimum required wall thickness by welding or brazing, which can be used to mitigate a defect associated with flow accelerated corrosion. The proposed condition related to flow accelerated corrosion does not constitute a new or changed NRC position. Therefore, the revision of this condition is not a backfit.

- The second proposed condition would require the design of a modification that mitigates a defect to incorporate a loss of material rate either 2 times the actual measured corrosion rate in that pipe location, or 4 times the estimated maximum corrosion rate for the piping system. This condition is consistent with Code Case N–789, ''Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate-Energy Carbon Steel Piping, Section XI, Division 1,'' Section 3, ''Design.'' The NRC has endorsed Code Case 789 in Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1.'' The proposed condition does not constitute a new or changed NRC position. Therefore, the revision of this condition is not a backfit.
- The third proposed condition would require the Owner to perform a wall thickness examination in the vicinity of the modification and relevant pipe base metal during each refueling outage cycle to detect propagation of the flaw unless the projected flaw propagation has been validated in two refueling outage cycles subsequent to the installation of the modification. This condition is consistent with Code Case N–789, Section 8, ''Inservice Monitoring,'' which requires followup wall thickness measurements to verify that the minimum design thicknesses are maintained. The followup examination requirements in IWA–4340 are inconsistent with the NRC endorsement of Code Case 789 in Regulatory Guide 1.147 in that the inspections can be limited to demonstrating that the flaw has not propagated into material credited for structural integrity without validating the project flaw growth. The proposed condition does not constitute a new or changed NRC position. Therefore, the

revision of this condition is not a backfit.

6. Revise § 50.55a(b)(2)(xxvi) to require that a system leakage test be conducted after implementing a repair replacement activity on a mechanical joint greater than NPS–1. The revision will also clarify what Code edition/addenda may be used when conducting the pressure test. This proposed revision clarifies the current requirements, which the NRC considers to be consistent with the meaning and intent of the current requirements. Therefore, the NRC does not consider the clarification to be a change in requirements. Therefore, this proposed change is not a backfit.

7. Revise § 50.55a(b)(2)(xxxii) to clarify the requirement to submit Summary Reports pre-2015 Edition and Owner Activity Reports in the 2015 Edition of the ASME BPV Code. This proposed revision clarifies the current requirements, which the NRC considers to be consistent with the meaning and intent of the current requirements. Therefore, the NRC does not consider the clarification to be a change in requirements. Therefore, this proposed change is not a backfit.

8. Add § 50.55a(b)(2)(xxxv)(B) which would condition the use of 2015 Edition of ASME BPV Code, Section XI, Appendix A, paragraph A–4200(c), to define $RT_{KIa}$ in equation (a) as $RT_{KIa} = T0 + 90.267 \exp(-0.003406T0)$ in lieu of the equation shown in the Code. When the equation was converted from SI units to U.S. Customary units a mistake was made which makes the equation erroneous. The equation shown above for $RT_{KIa}$ is the correct formula. This is part of the newly revised Code, and the proposed addition of this condition is not a new requirement and therefore not a backfit.

9. Revise § 50.55a(b)(2)(xxxvi) to extend the applicability to use of the 2015 and 2017 Editions of Section XI of the ASME BPV Code. The condition was added in the 2009–2013 rulemaking and ASME did not make changes in the 2015 or 2017 Editions of the ASME BPV Code; therefore, the condition still applies but is not new to this proposed rule. The NRC considers this revision to the condition to be consistent with the meaning and intent of the current requirements. Therefore, the NRC does not consider the clarification to be a change in requirements. Therefore, this proposed change is not a backfit.

10. Add § 50.55a(b)(2)(xxxviii) to condition ASME BPV Code, Section XI, Appendix III, Supplement 2. Supplement 2 is closely-based on ASME Code Case N–824, which was incorporated by reference with conditions in § 50.55a(a)(3)(ii). The conditions on ASME BPV Code, Section XI, Appendix III, Supplement 2 are consistent with the conditions on ASME Code Case N–824. Therefore, the NRC does not consider this a new requirement. Therefore, this proposed change is not a backfit.

11. Add § 50.55a(b)(2)(xxxix) to condition the use of Section XI, IWA–4421(c)(1) and IWA–4421(c)(2). The NRC considers these conditions necessary as part of the allowance to use IWA–4340. The proposed condition on the use of IWA–4421(c)(1) and IWA–4421(c)(2) does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

12. Add § 50.55a(b)(2)(xl) to prohibit the use of ASME BPV Code, Section XI, Subparagraphs IWB–3510.4(b)(4) and IWB–3510.4(b)(5). The proposed condition does not change the current material requirements because the currently required testing to meet the material requirements for those materials addressed by the new condition would continue to be performed per the existing requirements. Therefore this condition on the use of IWB–3510.4(b) does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

13. Add § 50.55a(b)(2)(xli) to prohibit the use of ASME BPV Code, Section XI, Subparagraphs IWB–3112(a)(3) and IWC–3112(a)(3) in the 2013 Edition of Section XI through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii). The proposed condition is consistent with the NRC's current prohibition of these items discussed in Regulatory Guide 1.193 in the discussion of ASME Code Case N–813. Therefore, this condition does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

14. Add § 50.55a(b)(2)(xlii) to provide conditions for Examination Category B–F, Item B5.11 and Item B5.71 in the 2011a Addenda through the latest edition and addenda incorporated by reference in previous paragraphs (a)(1)(ii) of this section. The proposed conditions are consistent with the conditions on ASME Code Case N–799 in Regulatory Guide 1.147. Therefore, these conditions do not constitute a new or changed NRC position. Therefore, the addition of these proposed conditions is not a backfit.

15. Revise § 50.55a(g)(6)(ii)(D) to implement Code Case N–729–6. On March 3, 2016, the ASME approved the sixth revision of ASME BPV Code Case N–729, (N–729–6). The NRC proposes to update the requirements of § 50.55a(g)(6)(ii)(D) to require licensees to implement ASME BPV Code Case N–729–6, with conditions. The ASME BPV Code Case N–729–6 contains similar requirements as N–729–4; however, N–729–6 also contains new requirements to address peening mitigation and inspection relief for replaced reactor pressure vessel heads with nozzles and welds made of more crack resistant materials. The new NRC conditions on the use of ASME BPV Code Case N–729–6 address operational experience, clarification of implementation, and the use of alternatives to the code case.

The current regulatory requirements for the examination of pressurized water reactor upper RPV heads that use nickel-alloy materials are provided in § 50.55a(g)(6)(ii)(D). This section was first created by rulemaking, dated September 10, 2008, (73 FR 52730) to require licensees to implement ASME BPV Code Case N–729–1, with conditions, instead of the examinations previously required by the ASME BPV Code, Section XI. The action did constitute a backfit; however, the NRC concluded that imposition of ASME BPV Code Case N–729–1, as conditioned, constituted an adequate protection backfit.

The General Design Criteria (GDC) for nuclear power plants (appendix A to 10 CFR part 50) or, as appropriate, similar requirements in the licensing basis for a reactor facility, provide bases and requirements for NRC assessment of the potential for, and consequences of, degradation of the reactor coolant pressure boundary (RCPB). The applicable GDC include GDC 14 (Reactor Coolant Pressure Boundary), GDC 31 (Fracture Prevention of Reactor Coolant Pressure Boundary), and GDC 32 (Inspection of Reactor Coolant Pressure Boundary). General Design Criterion 14 specifies that the RCPB be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture. General Design Criterion 31 specifies that the probability of rapidly propagating fracture of the RCPB be minimized. General Design Criterion 32 specifies that components that are part of the RCPB have the capability of being periodically inspected to assess their structural and leak tight integrity.

The NRC concludes that incorporation by reference of Code Case N–729–6, as conditioned, into § 50.55a as a mandatory requirement will continue to ensure reasonable assurance of adequate protection of public health and safety. Updating the regulations to require using ASME BPV Code Case N–

729–6, with conditions, ensures that potential flaws will be detected before they challenge the structural or leak tight integrity of the reactor pressure vessel upper head within current nondestructive examination limitations. The code case provisions and the NRC's proposed conditions on examination requirements for reactor pressure vessel upper heads are essentially the same as those established under ASME BPV Code Case N–729–4, as conditioned. Exceptions include: (1) An introduction of examination relief for upper heads with Alloy 690 penetration nozzles to be examined volumetrically every 20 years in accordance with Table 1 of ASME BPV Code Case N–729–6, (2) introduction of peening as a mitigation technique along with requirements for peening and inspection relief following peening and (3) substitution of a volumetric leak path examination for a required surface examination if a bare metal visual examination identifies a possible indication of leakage.

The NRC continues to find that examinations of reactor pressure vessel upper heads, their penetration nozzles, and associated partial penetration welds are necessary for adequate protection of public health and safety and that the requirements of ASME BPV Code Case N–729–6, as conditioned, represent an acceptable approach, developed, in part, by a voluntary consensus standards organization for performing future inspections. The proposed NRC conditions on Code Case N–729–6 address newly defined provisions by the Code for peening and inspection relief for upper heads with Alloy 690 penetration nozzles which provide alternatives to the use of current requirements and provide clarification or relaxation of existing conditions. Therefore, the NRC concludes the proposed incorporation by reference of ASME BPV Code Case N–729–6, as conditioned, into § 50.55a is not a backfit.

16. Revise § 50.55a(g)(6)(ii)(F), ''Examination requirements for Class 1 piping and nozzle dissimilar metal butt welds.'' On November 7, 2016, the ASME approved the fifth revision of ASME BPV Code Case N–770 (N–770–5). The NRC proposes to update the requirements of § 50.55a(g)(6)(ii)(F) to require licensees to implement ASME BPV Code Case N–770–5, with conditions. The ASME BPV Code Case N–770–5 contains similar baseline and ISI requirements for unmitigated nickel-alloy butt welds, and preservice and ISI requirements for mitigated butt welds as N–770–2. However, N–770–5 also contains new provisions which extend the inspection frequency for cold leg temperature dissimilar metal butt welds greater than 14-inches in diameter to once per interval not to exceed 13 years, define performance criteria and examinations for welds mitigated by peening, and criteria for inservice inspection requirements for excavate and weld repair PWSCC mitigations. Minor changes were also made to address editorial issues, to correct figures, or to add clarity. The NRC's proposed conditions on the use of ASME BPV Code Case N–770–5 have been modified to address the changes in the code case, clarify reporting requirements and address the implementation of peening and excavate and weld repair PWSCC mitigation techniques.

The current regulatory requirements for the examination of ASME Class 1 piping and nozzle dissimilar metal butt welds that use nickel-alloy materials are provided in § 50.55a(g)(6)(ii)(F). This section was first created by rulemaking, dated June 21, 2011 (76 FR 36232), to require licensees to implement ASME BPV Code Case N–770–1, with conditions. The NRC added § 50.55a(g)(6)(ii)(F) to require licensees to implement ASME BPV Code Case N–770–1, with conditions, instead of the examinations previously required by the ASME BPV Code, Section XI. The action did constitute a backfit; however, the NRC concluded that imposition of ASME BPV Code Case N–770–1, as conditioned, constituted an adequate protection backfit.

The GDC for nuclear power plants (appendix A to 10 CFR part 50) or, as appropriate, similar requirements in the licensing basis for a reactor facility, provide bases and requirements for NRC assessment of the potential for, and consequences of, degradation of the RCPB. The applicable GDC include GDC 14 (Reactor Coolant Pressure Boundary), GDC 31 (Fracture Prevention of Reactor Coolant Pressure Boundary) and GDC 32 (Inspection of Reactor Coolant Pressure Boundary). General Design Criterion 14 specifies that the RCPB be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture. General Design Criterion 31 specifies that the probability of rapidly propagating fracture of the RCPB be minimized. General Design Criterion 32 specifies that components that are part of the RCPB have the capability of being periodically inspected to assess their structural and leak-tight integrity.

The NRC concludes that incorporation by reference of Code Case N–770–5, as conditioned, into § 50.55a as a mandatory requirement will continue to ensure reasonable assurance of adequate protection of public health and safety. Updating the regulations to require using ASME BPV Code Case N–770–5, with conditions, ensures leakage would likely not occur and potential flaws will be detected before they challenge the structural or leak-tight integrity of these reactor coolant pressure boundary piping welds. All current licensees of U.S. pressurized water reactors will be required to implement ASME BPV Code Case N–770–5, as conditioned. The Code Case N–770–5 provisions for the examination requirements for ASME Class 1 piping and nozzle nickel-alloy dissimilar metal butt welds are similar to those established under ASME BPV Code Case N–770–2, as conditioned, however, Code Case N–770–5 includes provisions for two additional PWSCC mitigation techniques peening and excavate and weld repair along with requirements for performance of these techniques and examination of welds mitigated using them. Additionally, Code Case N–770–5 would allow for some relaxation in the re-examination or deferral of certain welds. However, the NRC's proposed condition would not allow this relaxation/deferral of examination requirements. The proposed NRC conditions on Code Case N–770–5 address newly defined provisions by the Code for examinations and performance criteria for mitigation by peening, examinations for mitigation by excavate and weld repair, and extension of the examination frequency for certain cold leg temperature welds which provide alternatives to the use of current requirements and provide clarification or relaxation of existing conditions. The proposed modification to the condition in § 50.55a(g)(6)(ii)(F)(11) adds an alternative method for meeting the condition. Therefore, the NRC concludes the proposed incorporation by reference of ASME BPV Code Case N–770–5, as conditioned, into § 50.55a is not a backfit.

ASME OM Code

1. Revise the introductory text of paragraph (b)(3) to reference the 1995 Edition through the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv), and to include Appendix IV of the ASME OM Code in the list of mandatory appendices incorporated by reference in § 50.55a. The revision of § 50.55a to incorporate by reference updated editions of the ASME OM Code is consistent with long-standing NRC policy and does not constitute a backfit.

2. Revise § 50.55a(b)(3)(ii) to specify that the condition on MOV testing applies to the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition of the ASME OM Code without the need to revise § 50.55a(b)(3)(ii). This is an administrative change to simplify future rulemakings and, therefore, is not a backfit.

3. Revise § 50.55a(b)(3)(iv) to (1) accept the use of Appendix II in the 2017 Edition of the ASME OM Code without conditions; (2) update § 50.55a(b)(3)(iv) to apply Table II to Appendix II of the ASME OM Code, 2003 Addenda through the 2015 Edition; and (3) remove the outdated conditions in paragraphs (A) through (D) of § 50.55a(b)(3)(iv). These changes reflect improvements to Appendix II in the 2017 Edition of the ASME OM Code, and the removal of outdated conditions on previous editions and addenda of the ASME OM Code. The relaxation of conditions in § 50.55a(b)(3)(iv) to reflect the updated ASME OM Code is not a backfit.

4. Revise § 50.55a(b)(3)(viii) to specify that the condition on Subsection ISTE applies to the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition of the ASME OM Code without the need to revise § 50.55a(b)(3)(viii). This is an administrative change to simplify future rulemakings and, therefore, is not a backfit.

5. Revise § 50.55a(b)(3)(ix) to specify that Subsection ISTF of the ASME OM Code, 2017 Edition, is acceptable without conditions, and that licensees applying Subsection ISTF in the 2015 Edition of the ASME OM Code shall satisfy the requirements of Appendix V of the ASME OM Code. Subsection ISTF in the 2017 Edition of the ASME OM Code has incorporated the provisions from Appendix V such that its reference to Subsection ISTF in the 2017 Edition of the ASME OM Code is not necessary. This is an update to the condition to apply to the 2015 Edition (in addition to the 2012 Edition), and a relaxation to remove the applicability of the condition to the 2017 Edition of the ASME OM Code. Therefore, the update to this condition is not a backfit.

6. Revise § 50.55a(b)(3)(xi) for the implementation of paragraph ISTC–3700 on valve position indication in the ASME OM Code to apply to the 2012 Edition through the latest edition and addenda of the ASME OM Code incorporated by reference in § 50.55a(a)(1)(iv). This will allow future rulemakings to revise § 50.55a(a)(1)(iv) to incorporate the latest edition of the ASME OM Code without the need to revise § 50.55a(b)(3)(xi). In addition, the NRC proposes to clarify that this condition applies to all valves with remote position indicators within the scope of Subsection ISTC and all mandatory appendices. This is an administrative change to simplify future rulemakings and clarify the condition and, therefore, is not a backfit.

7. Establish § 50.55a(b)(3)(xii) to require the application of the AOV provisions in Appendix IV of the 2017 Edition of the ASME OM Code, when implementing the ASME OM Code, 2015 Edition. This will provide consistency between the implementation of these two new editions of the ASME OM Code and, therefore, this condition is not a backfit.

8. Revise § 50.55a(f)(4)(i) and (ii) to relax the time schedule for complying with the latest edition and addenda of the ASME OM Code for the initial and successive IST programs from 12 months to 18 months. This relaxation of the time schedule for the IST programs is not a backfit.

9. Add § 50.55a(f)(7), ''Inservice Testing Reporting Requirements,'' to state that IST Plans and interim IST Plan updates for pumps and valves; and IST Plans and interim Plan updates related to snubber examination and testing must be submitted to the NRC. This requirement is currently in the ASME OM Code, but the ASME is planning to remove this from the ASME OM Code in the future. Therefore, this is not a backfit because the NRC is not imposing a new requirement.

10. Revise § 50.55a(g)(4)(i) and (ii) to relax the time schedule for complying with the latest edition and addenda of the ASME BPV Code for the initial and successive ISI programs from 12 months to 18 months. This relaxation of the time schedule for the ISI programs is not a backfit.

Conclusion

The NRC finds that incorporation by reference into § 50.55a of the 2015 and 2017 Editions of Section III, Division 1, of the ASME BPV Code subject to the identified conditions; the 2015 and 2017 Edition of Section XI, Division 1, of the ASME BPV Code, subject to the identified conditions; the 2015 and 2017 Editions of the ASME OM Code subject to the identified conditions, and the two Code Cases N–729–6 and N–770–5 subject to identified conditions does not constitute backfitting or represent an inconsistency with any issue finality provisions in 10 CFR part 52.

## XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this proposed rule does not impose a significant economical impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of commercial nuclear power plants. A licensee who is a subsidiary of a large entity does not qualify as a small entity. The companies that own these plants are not ''small entities'' as defined in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810), as the companies:

- Provide services that are not engaged in manufacturing, and have average gross receipts of more than $6.5 million over their last 3 completed fiscal years, and have more than 500 employees;
- Are not governments of a city, county, town, township or village;
- Are not school districts or special districts with populations of less than 50; and
- Are not small educational institutions.

## XV. Availability of Documents

The NRC is making the documents identified in Table 1 available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

TABLE 1—AVAILABILITY OF DOCUMENTS

| Document | ADAMS accession No. |
|---|---|
| Proposed Rule Documents: | |
| Regulatory Analysis (includes backfitting discussion in Appendix A) | ML18150A267. |
| Related Documents: | |
| Letter from Brian Thomas, NRC, to William Berger, ASME; ''Public Access to Material the NRC Seeks to Incorporate by Reference into its Regulations-Revised Request;'' January 8, 2018. | ML17310A186. |
| Email from Christian Sanna, ASME, to Brian Thomas, NRC; May 30, 2018 | ML18157A113. |
| Memorandum from Wallace Norris, NRC, to David Rudland, NRC; ''Summary of August 22, 2014, Public Meeting Between ASME and NRC—Information Exchange;'' September 8, 2014. | ML14245A003. |
| Letter from John Lubinski, NRC, to Kevin Ennis, ASME; ''NRC Information Notice 2014–07 Regarding Inspection of Containment Leak-Chase Channels;'' March 3, 2015. | ML14261A051. |
| Letter from Ralph Hill, ASME, to John Lubinski, NRC; ''ASME Code, Section XI Actions to Address Requirements for Examination of Containment Leak-Chase Channels;'' April 13, 2015. | ML15106A627. |
| NUREG/CR–6654, ''A Study of Air-Operated Valves in U.S. Nuclear Power Plants,'' February 2000. | ML003691872. |
| NRC Generic Letter 88–14, ''Instrument Air Supply System Problems Affecting Safety-Related Equipment,'' August 1988. | ML031130440. |
| NRC Regulatory Issue Summary 2000–03, ''Resolution of Generic Safety Issue (GSI) 158, 'Performance of Safety Related Power-Operated Valves Under Design-Basis Conditions','' March 2000. | ML003686003. |
| NRC Information Notice 1986–050, ''Inadequate Testing To Detect Failures of Safety-Related Pneumatic Components or Systems;'' June 1986. | ML031220684. |
| NRC Information Notice 1985–084, ''Inadequate Inservice Testing of Main Steam Isolation Valves,'' October 1985. | ML031180213. |
| NRC Information Notice 1996–048, ''Motor-Operated Valve Performance Issues,'' August 1996. | ML031060093. |
| NRC Information Notice 1996–048, Supplement 1, ''Motor-Operated Valve Performance Issues,'' July 1998. | ML031050431. |
| NRC Information Notice 1998–13, ''Post-Refueling Outage Reactor Pressure Vessel Leakage Testing Before Core Criticality,'' April 1998. | ML031050237. |
| NRC Information Notice 2014–07, ''Degradation of Leak-Chase Channel Systems For Floor Welds Of Metal Containment Shell And Concrete Containment Metallic Liner,'' May 2014. | ML14070A114. |
| NRC Information Notice 2015–13, ''Main Steam Isolation Valve Failure Events,'' December 2015. | ML15252A122. |
| NRC Inspection Report 50–254/97027, March 1998 | ML15216A276. |
| NUREG–0800, Section 5.4.2.2, Revision 1, ''Steam Generator Tube Inservice Inspection,'' July 1981. | ML052340627. |
| NUREG–0800, Section 5.4.2.2, Revision 2, ''Steam Generator Program,'' March 2007 | ML070380194. |
| NRC Regulatory Guide 1.83, Revision 1, ''Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes,'' July 1975 (withdrawn in 2009). | ML003740256. |
| RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 19. | ML18114A225. |
| NUREG/CR–7153, ''Expanded Materials Degradation Assessment (EMDA),'' October 2014 | ML14279A321.<br>ML14279A461.<br>ML14279A349 .<br>ML14279A430.<br>ML14279A331. |
| NUREG–0619, Rev. 1, ''BWR Feedwater Nozzle and Control Rod Drive Return Line Nozzle Cracking: Resolution of Generic Technical Activity A–10 (Technical Report),'' November 1980. | ML031600712. |
| NUREG–1801, Rev 2, ''Generic Aging Lessons Learned (GALL) Report,'' December 2010 | ML103490041. |
| NUREG–1800, Rev. 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' December 2010. | ML103490036. |
| NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' July 2017. | ML17187A031.<br>ML17187A204. |
| NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800,'' April 2011. | ML11116A062. |
| NUREG/CR–6933, ''Assessment of Crack Detection in Heavy-Walled Cast Stainless Steel Piping Welds Using Advanced Low-Frequency Ultrasonic Methods,'' March 2007. | ML071020410.<br>ML071020414. |
| NUREG/CR–7122, ''An Evaluation of Ultrasonic Phased Array Testing for Cast Austenitic Stainless Steel Pressurizer Surge Line Piping Welds,'' March 2012. | ML12087A004. |
| NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' July 2017. | ML17188A158. |
| Gupta KK, Hoffmann CL, Hamilton AM, DeLose F. Fracture Toughness of Pressure Boundary Steels With Higher Yield Strength. ASME. ASME Pressure Vessels and Piping Conference, *ASME 2010 Pressure Vessels and Piping Conference: Volume 7* ():45–58. doi:10.1115/PVP2010–25214. | *http://proceedings.asmedigitalcollection.asme.org/proceeding.aspx?articleid=1619041.* |
| ASME Codes, Standards, and Code Cases: | |
| ASME BPV Code, Section III, Division 1: 2015 Edition and 2017 Edition | *http://go.asme.org/NRC-ASME.* |

TABLE 1—AVAILABILITY OF DOCUMENTS—Continued

| Document | ADAMS accession No. |
| --- | --- |
| ASME BPV Code, Section XI, Division 1: 2011a Addenda, 2013 Edition, 2015 Edition, and 2017 Edition. | *http://go.asme.org/NRC-ASME.* |
| ASME OM Code, Division 1: 2015 Edition and 2017 Edition | *http://go.asme.org/NRC-ASME.* |
| ASME BPV Code Case N–729–6 | *http://go.asme.org/NRC-ASME.* |
| ASME BPV Code Case N–770–5 | *http://go.asme.org/NRC-ASME.* |
| EPRI Topical Report: | |
| EPRI Topical Report, '' Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement (MRP–335, Revision 3–A),'' November 2016. | *https://www.epri.com/#/pages/product/000000003002009241/?lang=en.* |

Throughout the development of this rulemaking, the NRC may post documents related to this proposed rule, including public comments, on the Federal rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2016–0062. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder for NRC–2011–0088; 2) click the ''Sign up for Email Alerts'' link; and 3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 50**

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC proposes to adopt the following amendments to 10 CFR part 50:

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Public Law 96–295, 94 Stat. 783.

■ 2. In § 50.55a:
■ a. In paragraph (a)(1)(i), remove the phrase ''(referred to herein as ASME BPV Code)'';
■ b. In paragraph (a)(1)(i)(E)(*16*), remove the word ''and'';
■ c. In paragraph (a)(1)(i)(E)(*17*), at the end of the sentence, remove the punctuation ''.'' and add in its place the punctuation '','';
■ d. Add paragraphs (a)(1)(i)(E)(*18*) and (*19*);
■ e. In paragraph (a)(1)(ii), remove the acronym ''BPV Code'' and add in its place the words ''Boiler and Pressure Vessel Code'';
■ f. Revise paragraphs (a)(1)(ii)(C)(*52*) and (*53*);
■ g. Add paragraphs (a)(1)(ii)(C)(*54*) and (*55*);
■ h. Revise paragraphs (a)(1)(iii)(C) and (D);
■ i. In paragraph (a)(1)(iv), remove the phrase ''(various edition titles referred to herein as ASME OM Code)'';
■ j. In paragraph (a)(1)(iv)(C)(*1*), at the end of the sentence, remove the punctuation ''.'' and add in its place the punctuation '','';
■ k. Add paragraphs (a)(1)(iv)(C)(*2*) and (*3*), and paragraph (a)(4);
■ l. In paragraph (b)(1), remove the number ''2013'' and add in its place the number ''2017'';
■ m. In paragraph (b)(1)(ii), in Table I, remove the number ''2013'' in the last entry in the first column and add in its place the number ''2017'', and remove the word ''Note'' wherever it appears in the second column and add in its place the word ''Footnote'';
■ n. In paragraph (b)(1)(iii), remove the phrase ''2008 Addenda'' wherever it appears and add in its place the phrase ''2017 Edition'';
■ o. In paragraph (b)(1)(v), remove the phrase ''the latest edition and addenda'' and add in its place the phrase ''2009b Addenda of the 2007 Edition, where the NQA–1–1994 Edition is'';
■ p. In paragraph (b)(1)(vi), remove the phrase ''the latest edition and addenda'' and add in its place the phrase ''all editions and addenda up to and including the 2013 Edition'';
■ q. In paragraph (b)(1)(vii), remove the phrase ''the 2013 Edition'' and add in its place the phrase ''all editions and addenda up to and including the 2017 Edition'';
■ r. Add paragraphs (b)(1)(x) through (xii);
■ s. In paragraph (b)(2), remove the number ''2013'' and add in its place the number ''2017'';
■ t. Remove and reserve paragraphs (b)(2)(vi), (vii), and (xvii);
■ u. Revise paragraph (b)(2)(ix) introductory text;
■ v. Add paragraph (b)(2)(ix)(K);
■ w. In paragraph (b)(2)(xviii)(D), remove the phrase ''and 2013 Edition of Section XI of the ASME BPV Code'' and add in its place the phrase ''through the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section'';
■ x. Revise paragraph (b)(2)(xx)(B) and add paragraph (b)(2)(xx)(C);
■ y. Remove and reserve paragraph (b)(2)(xxi)(A), and add paragraph (b)(2)(xxi)(B);
■ z. Revise paragraphs (b)(2)(xxv), (xxvi), (xxxii) and (xxxiv) introductory text;
■ aa. In paragraph (b)(2)(xxxiv)(B) add the phrase ''of the 2013 and the 2015 Editions'' after the phrase ''Appendix U'';
■ bb. Revise paragraph (xxxv);
■ cc. In paragraph (b)(2)(xxxvi), remove the word ''Edition'' and add in its place the phrase ''through 2017 Editions'';
■ dd. Add paragraphs (b)(2)(xxxviii) through (xlii);
■ ee. In paragraph (b)(3) introductory text, add the Roman numeral ''IV'' in sequential order, remove the phrase ''2012 Edition, as specified'' and add in its place the phrase ''latest edition and addenda of the ASME OM Code incorporated by reference'' and revise the last sentence in the paragraph;
■ ff. In paragraph (b)(3)(ii), remove the phrase '', 2011 Addenda, and 2012 Edition'' and add in its place the phrase ''through the latest edition and addenda

of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section'';

■ gg. Revise paragraph (b)(3)(iv) introductory text and remove and reserve paragraphs (b)(3)(iv)(A) through (D);

■ hh. In paragraph (b)(3)(viii), remove the phrase '', 2011 Addenda, and 2012 Edition'' and add in its place the phrase ''through the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section'';

■ ii. Revise paragraphs (b)(3)(ix) and (xi);

■ jj. Add paragraph (b)(3)(xii);

■ kk. In paragraphs (f)(4)(i) and (ii), remove the number ''12'' wherever it appears and add in its place the number ''18'';

■ ll. Add paragraph (f)(7);

■ mm. In paragraph (g)(4) introductory text, remove the phrase '', subject to the condition listed in paragraph (b)(2)(vi) of this section'';

■ nn. In paragraph (g)(4)(i), remove the number ''12'' wherever it appears and add in its place the number ''18'';

■ oo. In paragraph (g)(4)(ii), in the first sentence remove the number ''12'' and add in its place the number ''18''; remove the date ''August 17, 2017'' wherever it appears and add in its place ''[DATE 75 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]'';

■ pp. Remove and reserve paragraph (g)(6)(ii)(C);

■ qq. Revise paragraphs (g)(6)(ii)(D)(*1*), (*2*) and (*4*), and add paragraphs (g)(6)(ii)(D)(5) through (8);

■ rr. Revise paragraphs (g)(6)(ii)(F)(*1*) and (*2*), and remove and reserve paragraph (g)(6)(ii)(F)(*3*);

■ ss. Revise paragraphs (g)(6)(ii)(F)(*4*), (*6*), (*9*) through (11), and (*13*), and add paragraphs (g)(6)(ii)(F)(*14*) through (*16*).

The revisions and additions read as follows:

**§ 50.55a Codes and standards.**

(a)* * *

(1)* * *

(i)* * *

(E)* * *

(*18*) 2015 Edition (including Subsection NCA; and Division 1 subsections NB through NH and Appendices), and

(*19*) 2017 Edition (including Subsection NCA; and Division 1 subsections NB through NG and Appendices).

* * * * *

(ii)* * *

(C)* * *

(*52*) 2011a Addenda,

(*53*) 2013 Edition,

(*54*) 2015 Edition, and

(*55*) 2017 Edition.

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(iii)* * *

(C) *ASME BPV Code Case N–729–6.* ASME BPV Code Case N–729–6, ''Alternative Examination Requirements for PWR Reactor Vessel Upper Heads With Nozzles Having Pressure-Retaining Partial-Penetration Welds Section XI, Division 1'' (Approval Date: March 3, 2016), with the conditions in paragraph (g)(6)(ii)(D) of this section.

(D) *ASME BPV Code Case N–770–5.* ASME BPV Code Case N–770–5, ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities Section XI, Division 1'' (Approval Date: November 7, 2016), with the conditions in paragraph (g)(6)(ii)(F) of this section.

* * * * *

(iv)* * *

(C)* * *

(*2*) 2015 Edition, and

(*3*) 2017 Edition.

* * * * *

(4) Electric Power Research Institute, Materials Reliability Program, 3420 Hillview Avenue, Palo Alto, CA 94304–1338; telephone: 1–650–855–2000; *http://www.epri.com.*

(i) ''Materials Reliability Program: Topical Report for Primary Water Stress Corrosion Cracking Mitigation by Surface Stress Improvement (MRP–335, Revision 3–A)'', EPRI approval date: November 2016.

(ii) [Reserved]

* * * * *

(b)* * *

(1)* * *

(x) *Section III Condition: Visual examination of bolts, studs and nuts.* Applicants or licensees applying the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, NG–2582 in the 2017 Edition of Section III, must apply paragraphs (b)(1)(x)(A) through (B) of this section.

(A) *Visual examination of bolts, studs, and nuts: First provision.* When applying the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, NG–2582 in the 2017 Edition of Section III, the visual examinations are required to be performed in accordance with procedures qualified to NB–5100, NC–5100, ND–5100, NE–5100, NF–5100, NG–5100 and performed by personnel qualified in accordance with NB–5500, NC–5500, ND–5500, NE–5500, NF–5500, and NG–5500.

(B) *Visual examination of bolts, studs, and nuts: Second provision.* When applying the provisions of NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, NG–2582 in the 2017 Edition of Section III, the acceptance criteria from NB–2582, NC–2582, ND–2582, NE–2582, NF–2582, NG–2582 in the 2015 Edition of Section III shall be used.

(xi) *Section III condition: Mandatory Appendix XXVI.* When applying the 2015 and 2017 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the following conditions:

(A) *Mandatory Appendix XXVI: First provision.* When performing fusing procedure qualification tests and operator performance qualification tests in accordance with XXVI–4330 and XXVI–4340 the following essential variables shall be used for the performance qualification tests of butt fusion joints:

(*1*) Joint Type: A change in the type of joint from that qualified, except that a square butt joint qualifies as a mitered joint.

(*2*) Pipe Surface Alignment: A change in the pipe outside diameter (O.D.) surface misalignment of more than 10 percent of the wall thickness of the thinner member to be fused.

(*3*) PE Material: Each lot of polyethylene source material to be used in production (XXVI–2310(c)).

(*4*) Wall Thickness: Each thickness to be fused in production (XXVI–2310(c)).

(*5*) Diameter: Each diameter to be fused in production (XXVI–2310(c)).

(*6*) Cross-sectional Area: Each combination of thickness and diameter (XXVI–2310(c)).

(*7*) Position: Maximum machine carriage slope when greater than 20 degrees from horizontal (XXVI–4321(c)).

(*8*) Heater Surface Temperature: A change in the heater surface temperature to a value beyond the range tested (XXVI–2321).

(*9*) Ambient Temperature: A change in ambient temperature to less than 50 °F (10 °C) or greater than 125 °F (52 °C) (XXVI–4412(b)).

(*10*) Interfacial Pressure: A change in interfacial pressure to a value beyond the range tested (XXVI–2321).

(*11*) Decrease in Melt Bead Width: A decrease in melt bead size from that qualified.

(*12*) Increase in Heater Removal Time: An increase in heater plate removal time from that qualified.

(*13*) Decrease in Cool-down Time: A decrease in the cooling time at pressure from that qualified.

(*14*) Fusing Machine Carriage Model: A change in the fusing machine carriage model from that tested (XXVI–2310(d)).

(B) *Mandatory Appendix XXVI: Second provision.* When performing qualification tests of butt fusion joints in accordance with XXVI–4342, both the bend test and the high speed tensile impact test shall be successfully completed.

(C) *Mandatory Appendix XXVI: Third provision.* When performing fusing procedure qualification tests and operator performance qualification tests in accordance with 2017 Edition of BPV Code Section III XXVI–4330 and XXVI–4340, the following essential variables shall be used for the performance qualification tests of electrofusion joints:

(*1*) Joint Design: A change in the design of an electrofusion joint.

(*2*) Fit-up Gap: An increase in the maximum radial fit-up gap qualified.

(*3*) Pipe PE Material: A change in the PE designation or cell classification of the pipe from that tested (XXVI–2322(a)).

(*4*) Fitting PE Material: A change in the manufacturing facility or production lot from that tested (XXVI–2322(b)).

(*5*) Pipe Wall Thickness: Each thickness to be fused in production (XXVI–2310(c)).

(*6*) Fitting Manufacturer: A change in fitting manufacturer.

(*7*) Pipe Diameter: Each diameter to be fused in production (XXVI–2310(c)).

(*8*) Cool-down Time: A decrease in the cool time at pressure from that qualified.

(*9*) Fusion Voltage: A change in fusion voltage.

(*10*) Nominal Fusion Time: A change in the nominal fusion time.

(*11*) Material Temperature Range: A change in material fusing temperature beyond the range qualified.

(*12*) Power Supply: A change in the make or model of electrofusion control box (XXVI–2310(f)).

(*13*) Power Cord: A change in power cord material, length, or diameter that reduces current at the coil to below the minimum qualified.

(*14*) Processor: A change in the manufacturer or model number of the processor. (XXVI–2310(f)).

(*15*) Saddle Clamp: A change in the type of saddle clamp.

(*16*) Scraping Device: A change from a clean peeling scraping tool to any other type of tool.

(D) *Mandatory Appendix XXVI: Fourth provision.* Performance of crush tests in accordance with 2017 BPV Code Section III XXVI–2332(a) and XXVI–2332(b) and electrofusion bend tests in accordance with 2017 BPV Code Section III XXVI–2332(b) are required to qualify fusing procedures for electrofusion joints in polyethylene piping installed in accordance with 2017 Edition of ASME BPV Code Section III, Mandatory Appendix XXVI.

(E) *Mandatory Appendix XXVI: Fifth provision.* Electrofusion saddle fittings and electrofusion saddle joints are not permitted for use. Only full 360-degree seamless sleeve electrofusion couplings and full 360-degree electrofusion socket joints are permitted.

(xii) *Section III condition: Certifying Engineer.* When applying the 2017 and later editions of ASME BPV Code Section III, the NRC does not permit applicants and licensees to use a certifying engineer in lieu of a registered professional engineer for Code-related activities that are applicable to U.S. nuclear facilities regulated by the NRC.

(2)* * *

(ix) *Section XI condition: Metal containment examinations.* Applicants or licensees applying Subsection IWE, 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A) through (E) and (b)(2)(ix)(K) of this section. Applicants or licensees applying Subsection IWE, 1998 Edition through the 2001 Edition with the 2003 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A) and (B) and (b)(2)(ix)(F) through (I) and (b)(2)(ix)(K) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition, up to and including the 2005 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A) and (B) and (b)(2)(ix)(F) through (H) and (b)(2)(ix)(K) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition with the 2006 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(2) and (b)(2)(ix)(B) and (b)(2)(ix)(K) of this section. Applicants or licensees applying Subsection IWE, 2007 Edition through the 2015 Edition, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(2) and (b)(2)(ix)(B) and (J) and (K) of this section. Applicants or licensees applying Subsection IWE, 2017 Edition, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(2) and (b)(2)(ix)(B) and (J) of this section.

* * * * *

(K) *Metal Containment Examinations: Eleventh provision.* A general visual examination of containment leak chase channel moisture barriers must be performed once each interval, in accordance with the completion percentages in Table IWE 2411 1 of the 2017 Edition. Examination shall include the moisture barrier materials (caulking, gaskets, coatings, etc.) that prevent water from accessing the embedded containment liner within the leak chase channel system. Caps of stub tubes extending above the concrete floor interface may be inspected, provided the configuration of the cap functions as a moisture barrier as described previously. Leak chase channel system closures need not be disassembled for performance of examinations if the moisture barrier material is clearly visible without disassembly, or coatings are intact. The closures are acceptable if no damage or degradation exists that would allow intrusion of moisture against inaccessible surfaces of the metal containment shell or liner within the leak chase channel system. Examinations that identify flaws or relevant conditions shall be extended in accordance with paragraph IWE 2430 of the 2017 Edition.

(xx)* * *

(B) *System leakage tests: Second provision.* The nondestructive examination method and acceptance criteria of the 1992 or later of Section III shall be met when performing system leakage tests (in lieu of a hydrostatic test) in accordance with IWA–4520 after repair and replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda of Section XI incorporated by reference in paragraph (a)(1)(ii) of this section. The nondestructive examination and pressure testing may be performed using procedures and personnel meeting the requirements of the licensee's/applicant's current ISI code of record.

(C) *Section XI condition: System leakage tests: Third provision.* The use of the provisions for an alternative BWR pressure test at reduced pressure to satisfy IWA–4540 requirements as described in IWA–5213(b)(2), IWB–5210(c) and IWB–5221(d) of Section XI, 2017 Edition may be used subject to the following conditions:

(*1*) The use of nuclear heat to conduct the BWR Class 1 system leakage test is prohibited (*i.e.,* the reactor must be in a non-critical state), except during refueling outages in which the ASME Section XI Category B–P pressure test has already been performed, or at the end of mid-cycle maintenance outages fourteen (14) days or less in duration.

(*2*) In lieu of the test condition holding time of IWA–5213(b)(2), after pressurization to test conditions, and before the visual examinations commence, the holding time shall be 1 hour for non-insulated components.

* * * * *

(xxi)* * *

(A) [Reserved]

(B) *Section XI condition: Table IWB–2500–1 examination.* Use of the provisions of IWB–2500(f) and (g) and Table IWB–2500–1 Notes 6 and 7 of the 2017 Edition of ASME Section XI for examination of Examination Category B–D Item Numbers B3.90 and B3.100 shall be subject to the following conditions:

(*1*) A plant-specific evaluation demonstrating the criteria of IWB–2500(f) are met must be maintained in accordance with IWA–1400(l).

(*2*) The use of the provisions of IWB–2500(f) and Table IWB–2500–1 Note 6 for examination of Examination Category B–D Item Numbers B3.90 is prohibited for plants with renewed licenses in accordance with 10 CFR part 54.

(*3*) The provisions of IWB–2500(g) and Table IWB–2500–1 Notes 6 and 7 for examination of Examination Category B–D Item Numbers B3.90 and B3.100 shall not be used to eliminate the preservice or inservice volumetric examination of plants with a Combined Operating License pursuant to 10 CFR part 52, or a plant that receives its operating license after October 22, 2015.

* * * * *

(xxv) *Section XI condition: Mitigation of defects by modification.* Use of the provisions of IWA–4340 shall be subject to the following conditions:

(A) *Mitigation of defects by modification: First provision.* The use of the provisions for mitigation of defects by modification in IWA–4340 of Section XI 2001 Edition through the 2010 Addenda, is prohibited.

(B) *Mitigation of defects by modification: Second provision.* The use of the provisions for mitigation of defects by modification in IWA–4340 of Section XI 2011 Edition through the 2017 Edition may be used subject to the following conditions:

(*1*) The use of the provisions in IWA 4340 to mitigate crack-like defects or those associated with flow accelerated corrosion are prohibited.

(*2*) The design of a modification that mitigates a defect shall incorporate a loss of material rate either 2 times the actual measured corrosion rate in that pipe location (established based on wall thickness measurements conducted at least twice in two prior consecutive or nonconsecutive refueling outage cycles in the 10 year period prior to installation of the modification), or 4 times the estimated maximum corrosion rate for the piping system.

(*3*) The Owner shall perform a wall thickness examination in the vicinity of the modification and relevant pipe base metal during each refueling outage cycle to detect propagation of the flaw into the material credited for structural integrity of the item unless the examinations in the two refueling outage cycles subsequent to the installation of the modification are capable of validating the projected flaw growth.

(xxvi) *Section XI condition: Pressure testing Class 1, 2, and 3 mechanical joints.* When using the 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section, licensees shall pressure test mechanical joints in Class 1, 2, and 3 piping and components greater than NPS–1 which are disassembled and reassembled during the performance of a Section XI activity (*e.g.,* repair/replacement activity), in accordance with IWA–5211(a). The pressure test and examiners shall meet the requirements of the licensee's/applicant's current ISI code of record.

* * * * *

(xxxii) *Section XI condition: Summary report submittal.* When using ASME BPV Code, Section XI, 2010 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section, Summary Reports and Owner's Activity Reports described in IWA–6230 must be submitted to the NRC. Preservice inspection reports for examinations prior to commercial service shall be submitted prior to the date of placement of the unit into commercial service. For preservice and inservice examinations performed following placement of the unit into commercial service, reports shall be submitted within 90 calendar days of the completion of each refueling outage.

* * * * *

(xxxiv) *Section XI condition: Nonmandatory Appendix U.* When using Nonmandatory Appendix U of the ASME BPV Code, Section XI, 2013 Edition through the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section, the following conditions apply:

* * * * *

(xxxv) *Section XI condition: Use of $RT_{T0}$ in the $K_{Ia}$ and $K_{Ic}$ equations.*

(A) When using the 2013 Edition of the ASME BPV Code, Section XI, Appendix A, paragraph A–4200, if $T_0$ is available, then $RT_{T0}$ may be used in place of $RT_{NDT}$ for applications using the $K_{Ic}$ equation and the associated $K_{Ic}$ curve, but not for applications using the $K_{Ia}$ equation and the associated $K_{Ia}$ curve.

(B) When using the 2015 Edition of the ASME BPV Code, Section XI, Appendix A, paragraph A–4200 subparagraph (c) $RT_{KIa}$ shall be defined as $RT_{KIa} = T0 + 90.267 \exp(-0.003406T0)$.

* * * * *

(xxxviii) Section XI condition: ASME Code Section XI Appendix III Supplement 2. Licensees applying the provisions of ASME Code Section XI Appendix III Supplement 2, ''Welds in Cast Austenitic Materials,'' are subject to the following conditions:

(A) ASME Code Section XI Appendix III Supplement 2: First provision. In lieu of Paragraph (c)(1)(–c)(–2), licensees shall use a search unit with a center frequency of 500 kHz with a tolerance of +/ − 20 percent.

(B) ASME Code Section XI Appendix III Supplement 2: Second provision. In lieu of Paragraph (c)(1)(–d), the search unit shall produce angles including, but not limited to, 30 to 55 degrees with a maximum increment of 5 degrees.

(xxxix) *Section XI condition: Defect Removal.* The use of the provisions for removal of defects by welding or brazing in IWA–4421(c)(1) and IWA–4421(c)(2) of Section XI, 2017 Edition may be used subject to the following conditions:

(A) *Defect removal requirements: First provision.* The provisions of subparagraph IWA 4421(c)(1) shall not be used to contain or isolate a defective area without removal of the defect.

(B) *Defect removal requirements: Second provision.* The provisions of subparagraph IWA 4421(c)(2) shall not be used for crack-like defects.

(xl) *Section XI condition: Prohibitions on use of IWB–3510.4(b).* The use of ASME BPV Code, Section XI, subparagraphs IWB–3510.4(b)(4) and IWB–3510.4(b)(5) is prohibited.

(xli) *Section XI condition: Preservice Volumetric and Surface Examinations Acceptance.* The use of the provisions for accepting flaws by analytical evaluation during preservice inspection in IWB–3112(a)(3) and IWC–3112(a)(3) of Section XI, 2013 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section is prohibited.

(xlii) *Section XI condition: Steam Generator Nozzle-to-Component welds and Reactor Vessel Nozzle-to-Component welds.* Licensees applying the provisions of Table IWB–2500–1, Examination Category B–F, Pressure Retaining Dissimilar Metal Welds in Vessel Nozzles, Item B5.11 (NPS 4 or Larger Nozzle-to-Component Butt Welds) of the 2013 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section and Item B5.71 (NPS 4 or Larger Nozzle-to-Component Butt Welds) of the 2011a Addenda through

the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section must also meet the following conditions:

(A) Ultrasonic examination procedures, equipment, and personnel shall be qualified by performance demonstration in accordance with Mandatory Appendix VIII.

(B) When applying the examination requirements of Figure IWB–2500–8, the volumetric examination volume shall be extended to include 100 percent of the weld volume, except as provided in paragraph (b)(2)(xlii)(B)(*1*) of this section:

(*1*) When the examination volume that can be qualified by performance demonstration is less than 100 percent of the weld volume, the licensee may ultrasonically examine the qualified volume and perform a flaw evaluation of the largest hypothetical crack that could exist in the volume and not be qualified for ultrasonic examination, subject to prior NRC authorization in accordance with paragraph (z) of this section.

(*2*) [Reserved]

(3)* * * When implementing the ASME OM Code, conditions are applicable only as specified in the following paragraphs:

* * * * *

(iv) *OM condition: Check valves (Appendix II).* Licensees applying Appendix II of the ASME OM Code, 2003 Addenda through the 2015 Edition, is acceptable for use with the following requirements. Trending and evaluation shall support the determination that the valve or group of valves is capable of performing its intended function(s) over the entire interval. At least one of the Appendix II condition monitoring activities for a valve group shall be performed on each valve of the group at approximate equal intervals not to exceed the maximum interval shown in the following table:

* * * * *

(A through D) [Reserved]

* * * * *

(ix) *OM condition: Subsection ISTF.* Licensees applying Subsection ISTF, 2012 Edition or 2015 Edition, shall satisfy the requirements of Mandatory Appendix V, ''Pump Periodic Verification Test Program,'' of the ASME OM Code in that edition. Subsection ISTF, 2011 Addenda, is prohibited for use.

* * * * *

(xi) *OM condition: Valve Position Indication.* When implementing paragraph ISTC–3700, ''Position Verification Testing,'' in the ASME OM Code, 2012 Edition through the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section, licensees shall verify that valve operation is accurately indicated by supplementing valve position indicating lights with other indications, such as flow meters or other suitable instrumentation, to provide assurance of proper obturator position for valves with remote position indication within the scope of Subsection ISTC and all mandatory appendices.

(xii) *OM condition: Air-operated valves (Appendix IV).* When implementing ASME OM Code, 2015 Edition, licensees shall also apply the provisions in Appendix IV, ''Preservice and Inservice Testing of Active Pneumatically Operated Valve Assemblies in Nuclear Power Plants,'' of the 2017 Edition of the ASME OM Code.

* * * * *

(f)* * *

(7) *Inservice Testing Reporting Requirements.* Inservice Testing Program Test and Examination Plans (IST Plans) required by the ASME OM Code must be submitted to the NRC in accordance with § 50.4. All required IST Plan submittals must be made within 90 days of their implementation. Electronic submission is preferred. In addition to the IST Plans for the preservice test period, initial inservice test interval, and successive inservice test intervals specified in the ASME OM Code, interim IST Plan updates that involve changes to the following must be submitted:

(i) The edition and addenda of ASME OM Code that apply to required tests and examinations;

(ii) The classification of components and boundaries of system classification;

(iii) Identification of components subject to tests and examination;

(iv) Identification of components exempt from testing or examination;

(v) ASME OM Code requirements for components and the test or examination to be performed;

(vi) ASME OM Code requirements for components that are not being satisfied by the tests or examinations; and justification for alternative tests or examinations;

(vii) ASME OM Code Cases planned for use and the extent of their application; or

(viii) Test or examination frequency or schedule for performance of tests and examinations, as applicable.

* * * * *

(g)* * *

(6)* * *

(ii)* * *

(C) [Reserved]

(D) *Augmented ISI requirements: Reactor vessel head inspections*—(*1*) *Implementation.* Holders of operating licenses or combined licenses for pressurized-water reactors as of or after [DATE 75 DAYS AFTER EFFECTIVE DATE OF FINAL RULE] shall implement the requirements of ASME BPV Code Case N–729–6 instead of ASME BPV Code Case N–729–4, subject to the conditions specified in paragraphs (g)(6)(ii)(D)(2) through (8) of this section, by no later than one year after [DATE 75 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. All previous NRC-approved alternatives from the requirements of paragraph (g)(6)(ii)(D) of this section remain valid.

(*2*) *Appendix I use.* If Appendix I is used, Section I 3000 must be implemented to define an alternative examination area or volume.

* * * * *

(*4*) *Surface exam acceptance criteria.* In addition to the requirements of paragraph 3132.1(b) of ASME BPV Code Case N–729–6, a component whose surface examination detects rounded indications greater than allowed in paragraph NB–5352 in size on the partial-penetration or associated fillet weld shall be classified as having an unacceptable indication and corrected in accordance with the provisions of paragraph 3132.2 of ASME BPV Code Case N–729–6.

(*5*) *Peening.* In lieu of inspection requirements of Table 1, Items B4.50 and B4.60, and all other requirements in ASME BPV Code Case N–729–6 pertaining to peening, in order for a RPV upper head with nozzles and associated J-groove welds mitigated by peening to obtain inspection relief from the requirements of Table 1 for unmitigated heads, peening must meet the performance criteria, qualification, and inspection requirements stated in MRP–335, Revision 3–A, with the exception that a plant-specific alternative request is not required and NRC condition 5.4 of MRP–335, Revision 3–A does not apply.

(*6*) *Baseline Examinations.* In lieu of the requirements for Note 7(c) the baseline volumetric and surface examination for plants with a RPV Head with less than 8 EDY shall be performed by 2.25 reinspection years (RIY) after initial startup not to exceed 8 years.

(*7*) *Sister Plants.* Note 10 of ASME BPV Code Case N–729–6 shall not be implemented without prior NRC approval.

(*8*) *Volumetric Leak Path.* In lieu of paragraph 3200(b) requirement for a surface examination of the partial penetration weld, a volumetric leak path

assessment of the nozzle may be performed in accordance with Note 6 of Table 1 of N–729–6.

* * * * *

(F) *Augmented ISI requirements: Examination requirements for Class 1 piping and nozzle dissimilar-metal butt welds*—(*1*) *Implementation.* Holders of operating licenses or combined licenses for pressurized-water reactors as of or after [DATE 75 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], shall implement the requirements of ASME BPV Code Case N–770–5 instead of ASME BPV Code Case N–770–2, subject to the conditions specified in paragraphs (g)(6)(ii)(F)(*2*) through (*16*) of this section, by no later than one (1) year after [DATE 75 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. All NRC authorized alternatives from previous versions of paragraph (g)(6)(ii)(F) of this section remain applicable.

(*2*) *Categorization.* (*i*) Welds that have been mitigated by the Mechanical Stress Improvement Process (MSIPTM) may be categorized as Inspection Items D or E, as appropriate, provided the criteria in Appendix I of the code case have been met.

(*ii*) In order to be categorized as peened welds, in lieu of inspection category L requirements and inspections, welds must meet the performance criteria, qualification and inspection requirements as stated by MRP–335, Revision 3–A, with the exception that no plant-specific alternative is required.

(*iii*) Other mitigated welds shall be identified as the appropriate inspection item of the NRC authorized alternative or NRC-approved code case for the mitigation type in Regulatory Guide 1.147.

(*iv*) All other butt welds that rely on Alloy 82/182 for structural integrity shall be categorized as Inspection Items A–1, A–2, B–1 or B–2, as appropriate.

(*v*) Paragraph –1100(e) of ASME BPV Code Case N–770–5 shall not be used to exempt welds that rely on Alloy 82/182 for structural integrity from any requirement of this section.

(*3*) [Reserved]

* * * * *

(*4*) *Examination coverage.* When implementing Paragraph –2500(a) of ASME BPV Code Case N–770–5, essentially 100 percent of the required volumetric examination coverage shall be obtained, including greater than 90 percent of the volumetric examination coverage for circumferential flaws. Licensees are prohibited from using Paragraphs –2500(c) and –2500(d) of ASME BPV Code Case N–770–5 to meet examination requirements.

* * * * *

(*6*) *Reporting requirements.* The licensee will promptly notify the NRC regarding any volumetric examination of a mitigated weld that detects growth of existing flaws in the required examination volume that exceed the previous IWB–3600 flaw evaluations, new flaws, or any indication in the weld overlay or excavate and weld repair material characterized as stress corrosion cracking. Additionally the licensee will submit to the NRC a report summarizing the evaluation, along with inputs, methodologies, assumptions, and causes of the new flaw or flaw growth within 30 days following plant startup.

* * * * *

(*9*) *Deferrals.* (*i*) The initial inservice volumetric examination of optimized weld overlays, Inspection Item C–2, shall not be deferred.

(*ii*) Volumetric inspection of peened dissimilar metal butt welds shall not be deferred.

(*iii*) For Inspection Item M–2, N–1 and N–2 welds the second required inservice volumetric examination shall not be deferred.

(*10*) *Examination technique.* Note 14(b) of Table 1 and Note (b) of Figure 5(a) of ASME BPV Code Case N–770–5 may only be implemented if the requirements of Note 14(a) of Table 1 of ASME BPV Code Case N–770–5 cannot be met.

(*11*) *Cast stainless steel.* Examination of ASME BPV Code Class 1 piping and vessel nozzle butt welds involving cast stainless steel materials, will be performed with Appendix VIII, Supplement 9 qualifications, or qualifications similar to Appendix VIII, Supplement 2 or 10 using cast stainless steel mockups no later than the next scheduled weld examination after January 1, 2022, in accordance with the requirements of Paragraph –2500(a) or, as an alternative, using inspections that meet the requirements of ASME Code Case N–824 as conditioned in Regulatory Guide 1.147.

* * * * *

(*13*) *Encoded ultrasonic examination.* Ultrasonic examinations of non-mitigated or cracked mitigated dissimilar metal butt welds in the reactor coolant pressure boundary must be performed in accordance with the requirements of Table 1 for Inspection Item A–1, A–2, B–1, B–2, E, F–2, J, K, N–1, N–2 and O for essentially 100 percent of the required inspection volume using an encoded method.

(*14*) *Excavate and weld repair cold leg.* For cold leg temperature M–2, N–1 and N–2 welds, initial volumetric inspection after application of an excavate and weld repair (EWR) shall be performed during the second refueling outage.

(*15*) *Cracked excavate and weld repair.* In lieu of the examination requirements for cracked welds with 360 excavate and weld repairs, Inspection Item N–1 of Table 1, welds shall be examined during the first or second refueling outage following EWR. Examination volumes that show no indication of crack growth or new cracking shall be examined once each inspection interval thereafter.

(*16*) *Partial arc excavate and weld repair.* Inspection Item O cannot be used without NRC review and approval.

* * * * *

Dated at Rockville, Maryland, this 16th day of October, 2018.

For the Nuclear Regulatory Commission.

**Ho K. Nieh,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 2018–24076 Filed 11–8–18; 8:45 am]

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Part III

## Department of Labor

Occupational Safety and Health Administration
29 CFR Part 1926
Cranes and Derricks in Construction: Operator Qualification; Final Rule

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1926**

**[Docket ID–OSHA–2007–0066]**

**RIN 1218–AC96**

## Cranes and Derricks in Construction: Operator Qualification

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is updating the agency's standard for cranes and derricks in construction by clarifying each employer's duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA is also altering a provision that required different levels of certification based on the rated lifting capacity of equipment. While testing organizations are not required to issue certifications distinguished by rated capacities, they are permitted to do so, and employers may accept them or continue to rely on certifications based on crane type alone. Finally, this rule establishes minimum requirements for determining operator competency. This final rule will maintain safety and health protections for workers while reducing compliance burdens.

**DATES:** *Effective date:* This final rule is effective on December 10, 2018, except the amendments to 29 CFR 1926.1427(a) and (f) (evaluation and documentation requirements), which are effective February 7, 2019.

*Compliance date:* See Section C., Paperwork Reduction Act, of this document regarding dates of compliance with collections of information in this final rule.

**ADDRESSES:** In accordance with 28 U.S.C. 2112(a)(2), the agency designates Edmund C. Baird, Acting Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, to receive petitions for review of the final rule.

*Docket:* To read or download material in the electronic docket for this rulemaking, go to *http://www.regulations.gov* or to the OSHA Docket Office at Technical Data Center, Room N–3653, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350, TTY number (877) 889–5627. Some information submitted (*e.g.,* copyrighted material) is not available publicly to read or download through this website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*General information and press inquiries:* Mr. Frank Meilinger, OSHA Office of Communications; telephone: (202) 693–1999; email: *Meilinger.Francis2@dol.gov.*

*Technical inquiries:* Mr. Vernon Preston, Directorate of Construction; telephone: (202) 693–2020; fax: (202) 693–1689; email: *preston.vernon@dol.gov.*

*Copies of this* ***Federal Register*** *notice and news releases:* Electronic copies of these documents are available at OSHA's web page at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Executive Summary

OSHA is amending 29 CFR 1926 subpart CC to revise sections that address crane operator training, certification/licensing,[1] and competency. The purposes of these amendments are to alter the requirement that crane-operator certification be based on equipment ''type and capacity,'' instead permitting certification based on equipment ''type'' *or* ''type and capacity''; continue requiring training of operators; clarify and continue the employer duty to evaluate operators for their ability to safely operate equipment covered by subpart CC; and require documentation of that evaluation.

This rule alters the requirement that crane operators be certified by equipment ''type and capacity,'' which, based on the record, creates regulatory burden without additional safety benefit and artificially limits the potential for crane operators to obtain certification. Allowing certification by equipment ''type'' *or* ''type and capacity'' removes a regulatory burden that did not create an additional safety benefit.

This rule continues to require operator training. It likewise clarifies and continues the employer duty to evaluate operators for their ability to safely use equipment. Just as an employee's driver's license does not guarantee the employee's ability to drive all vehicles safely in all conditions an employer may require, crane-operator certification alone does not ensure that an operator has sufficient knowledge and skill to safely use all equipment. The record makes clear that employers need to evaluate operators and provide training when needed to ensure that they can safely operate cranes in a variety of circumstances. Similarly, and also consistent with many employers' current practices, employer evaluation of a crane operator's experience and competency with respect to the particular equipment assigned is essential to ensuring the safe operation of cranes on construction sites. This final rule accordingly continues the common-sense requirements that employers train operators and assess their competence and ability to work safely.

OSHA's final economic impact analysis determined that the most significant costs of the changes to the standard are associated with the requirements to perform the operator competency evaluation, document the evaluations, and provide any additional training needed by operators. OSHA estimates employers impacted by this rule employ approximately 117,130 crane operators. OSHA accordingly estimates the annual cost to the industry

[1] The term ''certification/licensing'' covers each of the certification options in the proposed rule (third-party certification or an audited employer certification program) as well as state or local operator licensing requirements. Operators employed by the U.S. military are also addressed in this standard and must be ''qualified'' by the military. OSHA is not making any substantive changes to the military qualification provision.

will be $1,481,000 for the performance of operator competency evaluations, $62,000 for documenting those evaluations, and $94,000 for any additional training needed for operators. OSHA's estimate of the total annual cost of compliance is $1,637,000.

OSHA also expects some cost savings from the changes to the rule. In particular, OSHA estimates a large one-time cost savings of $25,678,000 from dropping the requirement that crane operators be certified by capacity because that change eliminates the need for a very large number of operators to get an additional certification. OSHA also estimates that a small number of ongoing annual certifications due to an operator moving to a higher capacity crane would also no longer be needed, producing an additional annual cost savings of $426,000. These various elements lead, at a 3 percent discount rate over 10 years, to net annual cost savings of $1,752,000. At a discount rate of 7 percent there are annual cost savings of $2,388,000.

The agency has concluded that, on average, the impact of costs on employers will be low because most employers are currently providing some degree of operator training and performing operator competency evaluations to comply with the previous 29 CFR 1926.1427(k), and were previously doing so to comply with §§ 1926.550, 1926.20(b)(4), and 1926.21(b)(2). Employers who currently provide insufficient training will incur new compliance costs. Although OSHA anticipates that a few employers might incur significant new costs, the agency has concluded that, for purposes of the Regulatory Flexibility Act, the changes to the standard will not have a significant economic impact on a substantial number of small entities.

The agency has also determined that the final rule is technologically feasible because many employers already comply with all the provisions of the revised rule and the revised rule would not require any new technology. In addition, because the vast majority of employers already invest the resources necessary to comply with the provisions of the revised standard, the agency concludes that the revised standard is economically feasible.

## II. Background

Explanation of record citations in this document.

References in parentheses in this preamble are to exhibits or transcripts in the docket for this rulemaking. Documents from the subpart CC—Cranes and Derricks in Construction rulemaking record are available under Docket OSHA–2007–0066 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–2007–0066 on *http://www.regulations.gov.* This column lists individual records in the docket. This notice will identify each of these records only by the last four digits of the record, such as ''ID–0032'' for OSHA–2007–0066–0032. Identification of records from dockets other than records in OSHA–2007–0066 will be by their full ID number.

### *A. Operator Competency Requirements*

OSHA promulgated a new standard for cranes and derricks in construction, referred to in the Background section as the ''2010 crane standard,'' on November 10, 2010 (75 FR 47905). It was based on a proposal drafted as the result of negotiated rulemaking and issued on October 9, 2008 (73 FR 59714). Under this cranes standard, except for employees of the U.S. military and the operation of some specified equipment, employers were required to allow only certified operators to operate equipment after November 10, 2014.[2] In lieu of certification, the rule also allowed operators to operate cranes if licensed by state or local governments whose programs met certain minimum requirements.

This cranes standard included a four-year, phased-in effective date for the certification requirements. That phase-in period was intended to provide time for existing accredited testing organizations to develop programs that complied with the standard's requirements; for operators and employers to prepare for certification testing; and for more testing organizations to become accredited to make certifications available for the operation of the wide variety of cranes used in construction. During the phase-in period, employers were required to continue complying with two broad provisions: to ensure that crane operators were competent to operate the equipment safely and, if necessary, to train and evaluate employees who did not have the required knowledge or ability to operate the equipment safely (§ 1926.1427(k)(2)(i) and (ii)) (''employer duties''). These employer duties are essentially the same as those required by § 1926.20(b)(4) and § 1926.21(b)(2), which are discussed in more detail in the ''Operator Certification Requirement'' section that follows.

### *B. Operator Certification Requirement*

In 1979, OSHA published 29 CFR 1926.550, which specified requirements for crane and derrick operation that were adopted from existing consensus standards. Among these requirements was an employer's duty to comply with manufacturer specifications and limitations (§ 1926.550(a)(1)). In addition, employers were subject to general requirements elsewhere in the OSHA construction safety standards that required employers to permit only those employees ''qualified by training or experience'' to operate equipment (§ 1926.20(b)(4)) and to ''instruct each employee in the recognition and avoidance of unsafe conditions'' (§ 1926.21(b)(2)). However, crane incidents continued to be a significant cause of injuries and fatalities in the construction industry over the next few decades. In response, industry stakeholders called on OSHA to update its existing construction crane standard, including addressing advances in equipment technology and industry-recognized work practices.

Between 1998 and 2003, OSHA's Advisory Committee for Construction Safety and Health (ACCSH) tasked a workgroup with studying crane issues and ultimately recommended that OSHA revise the construction crane standard through negotiated rulemaking. The ACCSH workgroup reviewed the requirements of the most recent American Society of Mechanical Engineers (ASME)/American National Standard Institute (ANSI) B30 series standards applicable to various types of cranes and recommended that OSHA include work practices and protections from the ASME/ANSI B30 series standards in the new crane standard to the extent possible. The workgroup's recommendations included a request that OSHA require training and qualification provisions specific to crane operators, such as those of the ANSI B30 series, to supplant and augment the general provisions under §§ 1926.21(b)(2) and 1926.20(b)(4) (see ACCSH transcript Docket ID OSHA–ACCSH2002–2–2006–0194; pp. 129–135).

In 2003, OSHA commenced rulemaking by establishing a federal advisory committee, the *Cranes and Derricks Negotiated Rulemaking Advisory Committee* (C–DAC), to develop a proposal through consensus (see OSHA–S030–2006–0663–0639). The committee comprised industry stakeholders including employer users of cranes, crane manufacturers and

[2] The term ''equipment'' was used in the cranes standard's regulatory text because the rule covers cranes, derricks and other types of equipment. When OSHA uses ''cranes'' in this preamble, it is meant to apply to all covered equipment.

suppliers, labor organizations, an operator training and testing organization, a crane maintenance and repair organization, and insurers. C–DAC met eleven times between July 30, 2003, and July 9, 2004, and produced a consensus document that OSHA proposed for comment. Like the ACCSH workgroup, C–DAC acknowledged that the qualification and training requirements of §§ 1926.20(b)(4) and 1926.21(b)(2) were ineffective, and it proposed that OSHA require written and practical testing of crane operators (73 FR 59810). C–DAC also concluded that significant advances in crane/derrick safety would not be achieved without operator testing verified by accredited, third-party testing. Therefore, per C–DAC's recommendation, OSHA's proposal included a requirement for operator certification by ''type and capacity'' of the equipment in lieu of the previous general requirement that employers ensure their operators were competent to operate the machinery. However, OSHA proposed to retain the general employer duty during a four-year phase-in period for the operator certification (see discussion of § 1926.1427(k) at 73 FR 59938).

On October 12, 2006, ACCSH supported the C–DAC consensus document and recommended that OSHA use it as the basis of a proposed rule (see Docket ID OSHA–ACCSH2006–1–2006–0198–003).

On October 17, 2006, the Small Business Advocacy Review Panel (SBAR) submitted its final report on OSHA's draft proposal (OSHA–S030A–2006–0664–0019). The SBAR recommendations included a suggestion that OSHA solicit comment on whether ''equipment capacity and type'' needed clarification, which OSHA did (see 73 FR 59725). Regarding operator training, many Small Entity Representatives (SERs) thought the C–DAC's training requirements were too broad and should be focused on the equipment the operator will use and the operations to be performed. Two SERs recommended OSHA's powered industrial truck standard as a model for crane operator training requirements.

OSHA published its proposal on October 9, 2008 (73 FR 59714) and received over 350 public comments. The comments discussed a wide range of topics addressed by the crane standard. In response to requests from several public commenters, OSHA conducted a public hearing in March 2009. None of the commenters or hearing participants asked OSHA to remove the requirement that operators be certified by equipment capacity in addition to type. There were a few stakeholders who expressed some concern about the proposal to phase-out the employer duty and replace it with the requirement for employers to ensure operator competence through third-party testing (see ID–0341–March 19, 2009, page 41 and ID–0445). However, most stakeholders overwhelmingly supported the certification requirements in the rule as proposed.

On November 8, 2010, the final rule for cranes and derricks in construction, including requirements for crane operator certification, became effective. The original date by which all operators must be certified was November 10, 2014, but OSHA subsequently extended that date to November 10, 2017 (79 FR 57785 (September 26, 2014)) and then further extended it to November 10, 2018 (82 FR 51986 (November 9, 2017)). Prior to the amendments to the standard contained in this current final rule, the separate employer duty to evaluate operators was to cease on the date when operator certification was required.

*C. Certification by Crane Rated Lifting Capacity*

The 2010 crane standard required operators to become certified and permitted four options for doing so, one of which is certification by a third-party organization. A third-party certification is portable (a new employer can rely on it), but in relying upon a third-party certification as confirmation of an operator's knowledge and operating skills, employers need to know what kind of equipment the certification applies to when making determinations about which equipment an operator can operate at the worksite. Therefore, C–DAC recommended the requirement, which was included in the 2010 final rule, that third-party certification must indicate the equipment types and the rated capacities that an individual is certified to operate. The other certification options, which are not portable, do not require certification by capacity.

To address the concerns that testing organizations might offer certification for a variety of crane capacities but yet not offer a certification for the particular capacity of crane matching the equipment to which operators would be assigned, OSHA added subparagraph § 1926.1427(b)(2) to the 2010 crane standard. That paragraph clarified that the certification must list the type and rated lifting capacity of the crane in which the operator was tested, and for purposes of complying with the 2010 crane standard the operator would be ''deemed qualified'' to operate cranes of the same type that have equal or lower rated lifting capacity of the crane in which they were tested. During the rulemaking process for the 2010 crane standard, none of the commenters asked OSHA to remove the requirement that operators be certified by equipment capacity in addition to type.

*D. Post-2010 Rulemaking Concerns*

In OSHA outreach sessions following the publication of the 2010 crane standard, two accredited testing organizations that offered certifications by type but not capacity, as well as other stakeholders, questioned the need for specifying rated lifting capacities of equipment on their certifications to comply with the new 2010 crane standard. They expressed concern that meeting the capacity requirement would require significant changes from their previous certification practices without resulting in any real safety benefit because they believed that certification by capacity is not a meaningful component of operator certification testing. They asserted that employers already take steps to ensure that even certified operators are capable of safely operating the cranes at their worksites, regardless of the rated lifting capacities of those cranes. Thus, these testing organizations expressed the view that the certification by capacity requirement is unnecessary.

Those two testing organizations and many other stakeholders also expressed surprise and concern that on November 10, 2014, when OSHA's operator certification requirements were to take effect, the temporary requirements of § 1926.1427(k)(2)—the employer duty to ensure that operators are competent—would no longer be in effect and a similar requirement under 29 CFR 1926.20(b)(4), *qualification and experience,* would not apply. A number of stakeholders described this as a step backwards in safety.

OSHA also heard from many stakeholders that the employer should play a direct role in ensuring that their operators are competent because a standardized test cannot replicate all of the conditions that operators will need to safely navigate on the jobsite. They indicated that the employer typically has more information than a certifying organization to ensure that an operator has the skills, knowledge, and judgment required for safely completing a particular assignment on a particular crane. Many stakeholders likened operator certification to a learner's permit to drive a car. They cautioned that certification should be one of several factors to be weighed by an employer before allowing an employee to operate a crane.

*E. Pre-NPRM Discussions With the Construction Industry Stakeholders*

Discussions With Companies, Unions, and Organizations That Train, Assess, and/or Contract Crane Operators

In order to gather factual information for this rulemaking, OSHA conducted more than 40 site visits, conference calls, and meetings with stakeholders between June 6, 2013, and March 27, 2015, regarding their experiences with training, evaluating, and ensuring the competency of crane operators. Among these stakeholders were:

- 3 crane rental companies [1 large (more than 100 cranes), 1 medium (more than 20 cranes), 1 small (fewer than 20 cranes)]
- 10 construction companies that own/operate cranes [homebuilders, tank builders, propane delivery, steel erector]
- 3 large construction/operator training companies
- 5 crane manufacturers
- 3 construction labor unions
- 2 safety consultants/trainers
- 4 state agencies
- British Columbia's qualification program
- 1 sole proprietor/owner operator homebuilding company
- 3 crane insurers
- 3 certification testing bodies and accrediting entities

During discussions with stakeholders, OSHA personnel took notes that were consolidated into draft reports, which were provided to the employer or organization for their corrections or comment before the reports were finalized. Twenty-eight of the discussions were drafted into written reports. The other conversations were not documented because they were either informal or the organization's representatives did not want their comments to be cited in the rulemaking record other than being referenced anecdotally. The twenty-eight reports, as well as a detailed summary of the reports, are in the docket for this rulemaking (ID–0673). Overall, the stakeholders described their business models for bringing cranes to construction sites, operator competency programs, methods for ensuring that cranes brought to the worksite are safely run by competent operators, and views on the use of operator certification in their operator competency programs.

*F. Consulting ACCSH—Draft Proposal for Crane Operator Requirements*

OSHA presented draft revisions to the 2010 cranes standard to the Advisory Committee for Construction Safety and Health (ACCSH) at a special meeting conducted March 31 and April 1, 2015, in Washington, DC. In response, ACCSH recommended that OSHA (OSHA–2015–0002–0037):

- Move forward with the certification requirement and pursue employer qualification of crane operators.
- Clarify the requirement for certification so that certification can be by type, or by type and capacity.
- Reconsider the language in the draft revisions that appears to require the employer to observe the operator operate the crane in each and every configuration to determine whether the operator was competent.
- Use the text submitted by William Smith (OSHA–2015–0002–0051) as a substitute for the draft language on evaluation in the draft revisions.[3]
- Delete the annual re-evaluation provision in the draft revisions, and instead consider employer re-evaluations that coincide with the re-certification period.
- Consider adding a provision that if the operator operates the equipment in an unsafe manner, the operator must be re-evaluated by the employer.

*G. Promulgation of Notice of Proposed Rulemaking*

OSHA published a proposed rule on May 21, 2018 (83 FR 23534), and subsequently extended the comment period by an additional 15 days (83 FR 28562). The agency received over 1,200 public comments before the comment period closed on July 5, 2018.

*H. National Consensus Standards*

In adopting a standard, section 6(b)(8) of the Occupational Safety and Health (OSH) Act (29 U.S.C. 651 *et seq.*) requires OSHA to consider national consensus standards, and where the agency decides to depart from the requirements of a national consensus standard, it must explain why the departure better effectuates the purposes of the Act. As OSHA explained when adopting the updated crane rule in 2010, the ASME B30 Standard is a series of voluntary consensus standards that apply to most of the types of equipment, including cranes and derricks, covered by subpart CC as a whole (75 FR 48129–48130). The B30 standards each have chapters that address the operation of the equipment, which typically include a section on crane operator qualification and crane operator responsibilities (ID–0002, 0003, 0004, 0005, 0006, 0007, 0027, 0028). OSHA considered those provisions in drafting the proposed rule. Similarly, OSHA considered the general requirements of ANSI/American Society of Safety Professionals (ASSP) Z490.1,[4] which generally addresses the requirements of occupational safety and health training.

An association of occupational safety and health professionals asked OSHA to revise the 2010 crane standard to incorporate by reference the Z490.1 standard and the ''soon to be published A10 Standard for Construction and Demolition training'' (ID–1824). The commenter specifically requested that OSHA require that ''any occupational safety and health training program recognized in the rule must meet the requirements in the ANSI/ASSP Z490.1 Standard and/or the soon to be published A10 Standard for Construction and Demolition Training'' (Id.). The commenter also requested that ''any training accreditation organization recognized in the proposed rule,'' and any training curricula, also meet the requirements of those consensus standards (Id.).

OSHA is not incorporating either standard by reference in this rulemaking. First, OSHA cannot legally incorporate by reference a standard that has not yet been published. Second, the training requirements of ANSI/ASSE Z490.1 outline a general training program that is not specific to cranes. After years of interactions with stakeholders, OSHA believes that its revised training requirements will be more relevant to employers of crane operators. Third, given the comprehensive nature of ANSI/ASSE Z490.1, it does not appear to provide the same level of flexibility as OSHA's standard. OSHA developed this final rule with enough flexibility so that employers in the crane industry could adapt existing practices to comply with the standard and ensure safety in a variety of contexts.

The final rule takes many of the underlying concepts regarding operator qualification that are consistent across the B30 standards and ANSI/ASSE Z490.1, and it places them in one standard. This allows employers and crane operators to look to one place for OSHA requirements for operator competence and safety, rather than throughout fourteen relevant B30

[3] William Smith, commenting as a private citizen, presented revisions to 29 CFR 1926.1427(a) by the Coalition for Crane Operator Safety (OSHA–2015–0002–0051). The document recommended revising § 1926.1427(a) by adding provisions that an operator must meet OSHA's qualified person standard and mandating training if an operator cannot safely operate the equipment. In § 1926.1427(b), he recommended removing the language that an operator will be deemed qualified if he or she is certified. Throughout § 1926.1427, he recommended removing references to capacity.

[4] The American Society of Safety Engineers (ASSE) changed the name of the organization to the American Society of Safety Professionals (ASSP).

standards. OSHA's standard re-frames the provisions of those standards as enforceable employer duties, as the OSH Act requires, rather than as employee responsibilities or non-mandatory suggestions.

OSHA believes the revisions in this final rule to the 2010 cranes standard will better effectuate the purposes of the OSH Act than any applicable national consensus standard because the revisions consolidate all crane operator qualification requirements for ease of reference and integrate the permanent operator evaluation and documentation requirements into the standard, along with the existing training requirements and certification requirement, in a manner that OSHA can enforce under the Act.

**I. The Need for a Rule**

Based on the information collected from stakeholders and the recommendations of ACCSH, OSHA proposed to amend 29 CFR part 1926 subpart CC by revising sections that address crane operator training, certification/licensing, and competency. The purposes of the amendments are to clarify and continue training requirements for operators; to alter the requirement that crane-operator certification be based on equipment ''type and capacity,'' instead permitting certification based on equipment ''type'' *or* ''type and capacity''; to clarify and continue an employer's duty to evaluate operators and operators-in-training for their ability to safely operate assigned equipment covered by subpart CC; and to require that employers document the evaluation. OSHA is also reorganizing and clarifying the operator certification requirements in § 1926.1427.

Throughout this document OSHA refers to the ''previous'' or ''prior'' rule or standard as meaning 29 CFR part 1926 generally, § 1926.1427, or the paragraphs therein, as promulgated in 2010 and revised prior to this rulemaking. Discussion of the ''revised'' or ''amended'' standard refers to the amended standard as finalized through this rulemaking.

*Employer's Duty To Evaluate Its Operators*

In the NPRM for this rulemaking, OSHA proposed a permanent employer duty to evaluate operators that would not expire on the date certification is required. For the reasons discussed below, this final rule revises the prior 2010 crane standard to add that permanent employer evaluation duty. The key difference between this revision and the previous version is that the revision permanently maintains the employer's duty to evaluate its operators, and provides greater specificity as to what that duty entails in order to provide a clear and enforceable standard.

In the NPRM, OSHA requested comment on making the employer evaluation a permanent requirement in addition to certification. The agency received supportive comments for keeping the employer evaluation requirement in conjunction with certification (ID–0719, 1235, 1611, 1619, 1719, 1735, 1744, 1768). Generally, these comments supported making the employer duty permanent because certification alone is insufficient for an operator to competently operate the crane safely in a variety of workplace conditions, and the employer is in the best position to evaluate an operator's ability to use the specific crane for the specific tasks the employer assigns. As one of these commenters stated, ''[t]he intent should be to ensure that operators are fully qualified to be perform their tasks no matter what certifications they may hold and only the employer can ensure that,'' (ID–0719).

These comments are consistent with the feedback OSHA received from stakeholders prior to publication of the NPRM (ID–0673). In those discussions, most employers stated that they value third-party certification, but do not treat it as sufficient, by itself, to establish competency. Every employer with whom OSHA spoke stated that the employer's role in ensuring the competency of crane operators should be allowed to continue. All of the company representatives stated that they would not let an operator run any of their cranes based solely on his/her possession of an operator's certifications (see *e.g.* Report #1, 4, 6, 9, 11, 12, 16, 18, 20, 21, 22, 25 of ID–0673). Several industry representatives told OSHA that regardless of what OSHA's crane standard requires, construction and insurance industry influences would prevent many employers of crane operators from relying solely on certification to verify the competence of their crane operators (see *e.g.* Report #2, 3, 15, 19 of ID–0673). OSHA confirmed from these discussions that, regardless of whether an operator has a certification, all of the employers contacted evaluate their operators to ensure competency (see *e.g.* Reports #1, 2, 3, 6, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 22, 23, 26, 27, 28 of ID–0673). All stakeholders said it is essential that the operator's employer determine whether the operator is competent to safely operate a crane for a particular construction activity (see *e.g.* Report #1, 3, 4, 6, 7, 10, 12, 18, 20, 21, 22, 25, 28).

OSHA received no comments on the proposed rule that opposed making the employer duty permanent through an evaluation requirement. The agency received comments recommending revisions to the evaluation requirement. Those comments are addressed below in the discussion of Paragraph (f)—Evaluation.

Under the 2010 crane standard, the employer duty to ensure operator competence (§ 1926.1427(k)(2)(i)) ends in November 2018, after which operator certification would be the only required way to assess operator safety qualification. There were no other requirements for operator safety qualifications beyond certification after that date. Under the revised standard, the employer's evaluation is established as a critical element to ensure safe equipment operations on construction worksites. Third-party certification is portable so that operators do not need to be re-certified just because they switch employers; employers can rely on previous training the operator has received from other employers (or labor organizations) because the revised standard requires that every employer evaluate an employee first as an operator-in-training before permitting him or her to operate equipment without oversight. The evaluation process is performance-oriented and discussed in more detail in the explanation for revised § 1926.1427(f).

During its testimony in support of retaining an employer duty to assess operators, the International Union of Operating Engineers (IUOE) stated that removal of that duty would endanger operators and workers in the vicinity of cranes, ''[c]rane operators would be in a far worse position than they were before issuance of the final rule in August 2010'' (ID–0486). William Smith of Nations Builders Insurance Services (NCCCO board member and C–DAC member) agreed, commenting that ''[l]eaving the rule as written [with certification but without a continued employer duty after the initial deadline of November, 2014] would take us back in time not forward in protecting lives'' (ID–0474). A U.S. crane manufacturer stated that the lack of employer evaluation of an operator would be a problem, and certification is a foundation, but should not be a substitute for an employer competency evaluation. (Report #4 of ID–0673).

An employer's evaluation assesses different operator skills than certification tests. The reports from stakeholders prior to publication of the proposed rule showed that most stakeholders viewed certification only as a verification of an operator's basic

operating skills and crane knowledge such as reading load charts, recognizing basic crane hazards, inspecting the equipment, knowledge of applicable regulations, and familiarity with basic crane functions to control the boom and load line (ID–0673). The rulemaking record includes a list of activities from the IUOE that require specific skills that are not evaluated during the certification practical exam, but can be covered during an employer evaluation. These activities include inspecting the equipment; assessing unstable loads; hoisting loads of irregular size; operation from a barge; personnel hoisting; rigging the load; leveling the crane; hoisting in tight spaces where there is greater opportunity for damaging parts of the crane other than the load line; making judgments about wind speed and other environmental factors that can impact the performance of the equipment; performing multiple crane lifts; traveling with or without a load; operating near power lines; hoisting light loads; and hoisting blind picks where the operator cannot see the load (*see, e.g.,* Docket ID–0527, p. 3). IUOE has also noted that different skills are required to operate equipment with different attachments and identified in particular the unique skills required to operate with clam bucket or drag line attachments (Id.). By way of contrast, the IUOE stated that the operator certification practical test covers only basic operation functions (hoisting and lowering a load and guiding it through a course), and ''does not test on the breadth of activities that are involved in the operation of cranes'' (Id.). Local 49 of the IUOE added: ''It is understood in the industry that it is not economically feasible to simulate on a training site all scenarios that arise on a construction site and that training and evaluations of training must occur on an ongoing basis'' (ID–1719). Without the employer duty to evaluate operators on the equipment to which they are assigned, an employer could permit a certified operator to operate tower cranes and other large equipment in any configuration with any number of attachments without determining if the operator possesses the requisite knowledge and skills necessary to ensure safety and address the issues identified by IUOE and others.

Some employers described certification as a ''learner's permit'' (ID–0539, Reports #15, 26 of ID–0673), and a number of employers with whom OSHA spoke stated that they would not allow a certified operator to use their equipment without first also evaluating the operator to verify competence (Reports #1, 6, 18, 20, 22 of ID–0673). The Executive Director of the IUOE's certification program stated that he does ''not know any contractors . . . at least the union contractors that we're associated with, who fail to make sure that their people are qualified'' (OSHA–2015–0002–0036). A trade association commented that ''[t]he record makes clear . . . that the fact that an employee has been certified as competent to operate a crane does not mean that the employee is qualified to operate the employer's particular equipment'' (ID–1768). A training company representative stated that operators with very little experience can acquire a sufficient basis of knowledge of the crane to pass a certification exam without being truly qualified to operate independently and safely on a construction worksite (Report #21 of ID–0673). Two stakeholders expressed concern that relying solely on certification could be dangerous because it would create a false sense of qualification, leading some contractors to be less vigilant in evaluating the competence of operators to safely operate equipment for all of their tasks (Reports #9, 11 of ID–0673).

In addition to the commenters identified earlier as supporting an evaluation requirement, OSHA had already heard from many stakeholders that the employer should play a direct role in ensuring that their operators are competent (ID–0539, Reports #1, 2, 3, 4, 6, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 25, 26 of ID–0673). A commenter asserted that extending the employer duty is ''logical'' because the employer should ''have the ability to make an evaluation of an operator's ability to operate equipment in a safe and responsible manner'' (ID–1779). One commenter stated many of its members believe ''certification itself is not sufficient to establishing crane operator competency, and believe that employers must initially evaluate and continue to re-evaluate their crane operators to determine their ability to safely operate a crane'' (ID–1735). Because a standardized test cannot replicate all of the conditions that operators must safely navigate on the jobsite, the employer is typically in a better position than a certifying organization to fully evaluate an operator to ensure that he or she has the skills, knowledge, and ability to recognize and avert risks required for a particular assignment on a particular crane. Just as an employee's driver's license would not guarantee the employee's ability to drive all vehicles safely in all conditions an employer may require, crane operator certification alone does not ensure that an operator has sufficient knowledge and skill to safely use equipment.

Many stakeholders indicated that in their experience operator competency needed to be crane-specific (Reports #1, 2, 3, 4, 6, 16, 19, 21 of ID–0673). A comment to the proposed rule supporting a permanent employer duty stated ''employers have a duty to evaluate all crane operators to ensure that they are qualified to perform the assigned work on the type and model used'' (ID–1719). Similarly, a certification body believes that ''[i]t's always been the employer's duty to qualify an operator for the specific crane and task'' (ID–1235). Some of the stakeholders raised concerns about the importance of these different crane characteristics in discussing whether OSHA should require certification to be by type and capacity or just by type. For example, one employer told OSHA that certification could be by type alone, provided the employer was responsible for evaluating operator competency on assigned equipment (Report #1 of ID–0673). A crane operator training company that OSHA interviewed noted that no one certification test could ever capture all of the types, configurations, and capacities of cranes and the activities they may be used to perform at the jobsite. Therefore, it is important that the employer typically verify the operator's skill level through an experienced assessor (Report #20 of ID–0673).

As OSHA noted in the NPRM, an extensive analysis of crane accidents published by HAAG Engineering in 2014 concluded that crane incidents are more likely to be reduced if a company ensures that an operator possesses equipment-specific skills and knowledge in addition to certification:

> The certification process ensures that an operator has demonstrated a core knowledge set of the principles of cranes and crane operations, OSHA regulations, and ASME standards requirements . . . has successfully demonstrated both knowledge and the physical skill set to operate a type of crane. . . .
>
> Comparing responsibility failure trends between crane types gives strong evidence that crane model-specific training is an overwhelmingly good idea. . . . In order for the industry to theoretically provide a quality certification for each model crane, the process would take decades just to develop certifications for existing model cranes, and with new models coming out every year, that development process would also be never-ending. Each time a new model crane was released, its use would be prohibited until a qualified certification process was developed if model-specific certification was required. Model specific qualification is an issue that cannot and should not be done by the

certification process, but should be done through training and examination by the individual company and corresponding operator in addition to earning type-specific certifications which ensure the knowledge and skill sets discussed above.

Understanding of crane principles, general crane characteristics, individual responsibilities, and national standard guidelines is the basis for certification; however, an operator's familiarity with the particular unit is invaluable in the goal to reduce operator associated incidents.[5]

(83 FR 23541). No commenters challenged this assessment of the significance of equipment-specific evaluations.

The evaluation requirement is a mechanism to help ensure that operators possess the skill to account for and safely use the variations within even a single type of crane; without the evaluation requirement there would be no distinction between the competency required to operate the same type that has differing controls. It is OSHA's intent with the revised standard, including the evaluation, to avoid accidents such as the *Deep South* collapse, in which an operator was assigned to a crane of a type for which he was certified, but the controls and operations were significantly different from those with which he was familiar. Operator error factored into the collapse of the crane, killing four people. The reviewing court upheld the Occupational Safety and Health Review Commission's finding that the operator was not qualified to operate that crane. The Commission noted that the crane that collapsed was ''significantly different'' from the cranes that the operator had previously operated and that the operator had not had previous experience with the crane in a similar configuration (see *Deep S. Crane & Rigging Co.,* 23 BNA OSHC 2099 (No. 09–0240, 2012), *aff'd Deep S. Crane & Rigging Co.* v. *Harris,* 535 F. App'x 386, 390 (5th Cir. 2013)).

The evaluation requirement is also necessary to ensure safety as the crane industry moves away from traditional training models. A crane insurance representative stated that the industry is moving away from assigning two employees to work on a crane, where the less experienced employee is mentored by the other, to where only one person is assigned to work on a crane, and expressed concern that this shift may impact the availability of sufficiently qualified operators and the safety of the industry (Report #25 of ID–0673). Such an approach increases the importance of an employer evaluation requirement because informal monitoring would be less frequent. Requiring certification by crane type or type and capacity, and retaining the employer duty to evaluate operators should help to ensure that crane operators have sufficient training to maintain safety when two employees are no longer assigned to work on a crane. The previous certification requirement ensures baseline knowledge and skills to operate a crane, while retaining the employer duty to evaluate operators provides some assurance that the operator can safely handle the specifics of operating particular equipment and performing more challenging tasks in a variety of contexts.

The only concerns that commenters on the proposed rule expressed about the evaluation requirement focused on the specifics of the requirement, not the proposition that an employer should have a duty to ensure operator competency. OSHA discusses the specific requirements of the evaluation more fully in the preamble explanation of revised § 1926.1427(f). It is also important to note that OSHA is not creating a totally new duty. All employers were required to assess their operators prior to the 2010 crane rulemaking, continued to have such a duty under the previous § 1926.1427(k), and none of the commenters raised any hardships caused by an employer duty to assess operators. To promote consistency and effectiveness and ensure safety, this rulemaking simply clarifies what that evaluation involves and makes the duty permanent.

OSHA requested comment on whether there are more effective ways of ensuring that operators are fully qualified to use cranes for the specific activities that they will be required to complete. Specifically, OSHA asked whether ''independent third-party evaluations'' should be required (83 FR 23542). One commenter responded, opposing such a requirement on the grounds that third-party evaluators might not be commercially available and, even if available, would not be more effective than evaluations conducted by the operator's employer (ID–1615).

A different commenter suggested that OSHA should implement an ''operator training program such as an oiler was in the past'' so that ''the training is complemented with knowledge of the machine he will be operating . . . seat time will give knowledge of the load charts to understand the difference between structural, tipping capacity's [sic] from a trained operator'' (ID–698). OSHA envisions the revised rule functioning in a flexible manner that will lead to the results the commenter describes: A combination of training and experiential learning that ensures that the operator can safely operate the equipment to which he or she is assigned.

OSHA considered several alternative approaches to the provisions in paragraph (f) adopted through this rulemaking, but concluded that those alternatives would not be as effective as the adopted measures in ensuring crane operator competency and safety. The first approach was to remove the phase-out of the employer duty without providing further guidance or criteria. As discussed later in the preamble section for paragraph (f), OSHA believes that evaluations of operator competency are critical to safe crane operations and that proposing a general requirement for this purpose, without providing additional criteria, would be inadequate.

The second approach considered was adopting the ACCSH recommendation to use the Coalition for Crane Operator Safety's language requiring employers to ensure that operators ''meet the definition of a qualified person'' before operating the equipment. As explained later in the preamble discussion of paragraph (f), OSHA is adopting a compromise version of this regulatory text as proposed by a commenter. OSHA is concerned that the ACCSH recommendation, like the general duty under § 1926.21(b)(4), fails to provide sufficient specifics to ensure operator competence. Moreover, the ability to ''resolve problems,'' which is a key component in the definition of a ''qualified person,'' only captures one aspect of what safe crane operation entails. And by relying on the definition of a ''qualified person,'' which can be met in some cases solely through ''possession of a . . . certificate,'' the whole point of having some additional assurance of operator competency beyond operator certification would be lost: An operator could still conceivably become both certified *and* a qualified person through the completion of a single certification test. For these reasons, OSHA believes that this final rule better establishes the employer's obligation to ensure crane operator competency.

In the third approach, OSHA explored the practicality of modeling a crane operator evaluation process on one implemented in the provinces of Canada. In those provinces, a quasi-governmental agency tracks the base level of certification and operating

[5] Wiethron, Jim D., *Crane Accidents: A Study of Causes & Trends to Create a Safer Work Environment,* 1983–2013, pp. 105–106 (HAAG Engineering, 2014)

experiences of the operators in an internet database. For example, the British Columbia system has at least three different levels of ''qualification,'' and employers are responsible for observing, evaluating, and ensuring the operators are competent to perform the work required at each level (ID–0672). OSHA concluded, however, that this level of oversight would be impractical on a national scale in the United States. The expertise needed to develop and maintain a system that works for the entire regulated community across the United States, and to verify the information in such a system, would be substantial. Moreover, even after providing certification for its operators, employers in Canada still have the obligation to ensure the competency of operators to safely perform assigned work, which is similar to the operator evaluation requirements of this final rule.

Based on all of the reasons in the foregoing discussion, OSHA concludes that it will improve crane safety to continue and make permanent the requirement for employers to evaluate their operators and operators-in-training in addition to ensuring that they are properly certified. Employer evaluation increases safety by focusing on specific knowledge and skills that operators need for the safe use of particular equipment for particular tasks in a variety of contexts. The specific evaluation requirements are set out in paragraph § 1926.1427(f) and are explained later in this document in the preamble discussion of that paragraph.

Elimination of the Requirement To Certify Based on Capacity of Crane

As discussed above, OSHA proposed altering the requirement for different certifications based on different lifting capacities of equipment after receiving feedback that the capacity requirement does not provide a significant safety benefit because the lifting capacity of the equipment is not a meaningful component of operator certification testing. In its request for comments on this issue, the agency specifically asked for information that demonstrated the safety benefits of certification by capacity.

OSHA received one comment claiming that ''[r]etaining capacity will require more stringent testing resulting in an increase in crane safety, thus fewer accidents,'' (ID–1235), but this commenter did not provide any evidence of how certification by capacity increases safety or reduces accidents. OSHA received a comment from an association stating that its members were split on this issue, but the association did not share why some of its members opposed the removal of capacity (ID–1824). Another association commented that it ''concurs with the proposed rule'' and suggested that it would be ''better than the current rule,'' but the rest of its comment on this point was not clear (ID–1632). Without further explanation, that commenter added that it supported certification organizations having a choice and ''believes it would be best for the safety of crane operations to certify by type and capacity'' (Id.). However, the commenter did not offer any information about the safety benefits of certification by capacity.

While testing organizations differed over whether a certification by capacity provided any useful information to an employer, most commenters agreed that capacity is just one factor to be considered in the employer's overall evaluation of the operator's ability. The majority of commenters that responded to this issue support removing the certification by capacity requirement (ID–0690, 0703, 0719, 1611, 1616, 1619, 1628, 1632, 1719, 1735, 1744, 1755, 1764, 1768, 1801, 1816, 1826, 1828). A certification body commented that ''virtually unanimity exists in the industry that certification by 'capacity' should be eliminated from the regulatory requirement'' (ID–1816). Another certification body echoed that point, stating that ''The industry has been clear in its comments that, whereas equipment ''type'' is critical when delineating knowledge and skill, equipment ''capacity'' is just one of many other factors (like configuration) to be considered in the employer's overall evaluation of an operator's ability'' (ID–1755).

The majority of comments responding to this request did not know of any safety benefits related to certification by capacity (ID–1615, 1628, 1755, 1768). One comment claimed that capacity ''did very little to advance the safe operation of cranes at construction jobsites'' (ID–1619). Two certification bodies that offer certification by capacity did not offer any safety evidence to the agency in public hearings or stakeholder meetings (ID–1719). Referring to consensus standards and industry best practices, one commenter noted that ASME B30.5 ''does not describe testing or examination by capacity,'' and the organization ''is not aware of any state or local regulatory body . . . that requires certification or licensing by both type and capacity'' (ID–1816).

In addition to many commenters stating that certification by capacity has no demonstrable safety benefit, many also consider the requirement to be burdensome (ID–0616, 0690, 0703, 0719, 1619). One of these commenters stated that they paid for their operator to be certified, but the operator only passed the test for cranes up to a capacity of 21 tons and was forced to also take an entirely different exam for cranes up to 75 tons in order to operate a crane of 23 tons, just over the capacity limit of the lower test (ID–0616). A different commenter concluded that some of their members find the capacity requirement ''unwieldy and exceptionally burdensome'' (ID–1824). One commenter explained that if the OSHA capacity requirement went into effect, ''approximately 83% of those possessing certification'' would not be compliant with the 2010 cranes standard (ID–1801).

One commenter believes ''[t]he industry has been clear . . . ''capacity'' is just one of many other factors (like configuration) to be considered in the employer's overall evaluation of an operator's ability'' (ID–1755). One commenter agreed with OSHA that the employer evaluation was the appropriate time to consider the crane's capacity among other factors (see discussion of § 1926.1427(f)(1) later in this document) (ID–1735).

Based on this record and the continued employer duty to evaluate operators, which provides an additional means for ensuring that the operator can safely use equipment for the range of tasks assigned, OSHA has determined that employee certification by capacity of crane should no longer be required; rather, it may be an option for those employers who wish to use it. Employers can comply with the third-party certification requirements of OSHA's crane standard by ensuring that their operators are certified by an accredited organization by type of crane or, alternatively, by both type of crane and by capacity.

J. Significant Risk

Section 3(8) of the OSH Act requires that OSHA standards be ''reasonably necessary or appropriate to provide safe or healthful employment'' (29 U.S.C. 652(8)), which the Supreme Court has interpreted as requiring OSHA to show that ''significant risks are present and can be eliminated or lessened by a change in practices'' (*Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607, 642 (1980) (plurality opinion) (''*Benzene*'')). The Court clarified that OSHA has considerable latitude in defining significant risk and in determining the significance of any particular risk, noting that ''[i]t is the Agency's responsibility to determine, in the first instance, what it considers to be

a 'significant' risk'' (*Benzene,* 448 U.S. at 655).

Although OSHA makes significant risk findings for both health and safety standards, the methodology used to evaluate risk in safety rulemakings is more straightforward. Unlike the risks related to health hazards, which ''may not be evident until a worker has been exposed for long periods of time to particular substances,'' the risks associated with safety hazards such as crane tipovers, electrocution, and striking or crushing workers with a hoisted load, ''are generally immediate and obvious.'' *Benzene,* 448 U.S. at 649, n.54. The final rule for OSHA's 2010 cranes standard contained an extensive analysis in which the agency examined fatality and injury data available in 2008 and concluded that employees working in or around cranes and derricks face a significant risk of death or serious injury (see 75 FR 48093).

When, as here, OSHA has previously determined that its standard substantially reduces a significant risk, it is unnecessary for the agency to make additional findings on risk for every provision of that standard (see, *e.g.*, *Public Citizen Health Research Group* v. *Tyson,* 796 F.2d 1479, 1502 n.16 (DC Cir. 1986) (rejecting the argument that OSHA must ''find that each and every aspect of its standard eliminates a significant risk''). Rather, once OSHA makes a general significant risk finding in support of a standard, the next question is whether a particular requirement is reasonably related to the purpose of the standard as a whole. (*Asbestos Information Ass'n/N. Am.* v. *Reich,* 117 F.3d 891, 894 (5th Cir. 1997); *Forging Indus. Ass'n* v. *Secretary of Labor,* 773 F.2d 1436, 1447 (4th Cir. 1985); *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1237–38 (DC Cir. 1980)).

As explained elsewhere in this preamble, this final rule meets this test. OSHA previously concluded that the 2010 crane standard would substantially reduce risk through a combination of mandatory operator certification and other requirements, but OSHA did not claim that the standard would eliminate the significant risk entirely. The employer evaluation is reasonably related to the reduction of significant risk because it reduces employee exposure to the previously identified hazards. It reflects current industry best practices and helps to ensure the employee has the skills and knowledge to operate the crane safely during the lifts to which he or she is assigned.[6]

The agency notes that there is ample evidence in the record that workers could continue to be exposed to the hazards that OSHA sought to reduce through the 2010 cranes standard. OSHA relied on fatality data available in 2008 when it promulgated the crane standard, but unfortunately crane-related fatalities have continued to occur. According to the Census of Fatal Occupational Injuries, 47 crane operators were killed between 2011 and 2014 (this does not include accidents with non-fatal injuries or crane incidents causing fatalities or injuries to workers other than the crane operator).[7]

Another useful data source is a report by an engineering forensics firm, HAAG Engineering, of a large dataset of crane accidents that it has investigated over a period of 30 years (Wiethorn, 2014, the ''HAAG Report'') (ID–0674). The final dataset has 507 incidents, covering all types of cranes and accidents. This dataset is likely biased towards larger accidents since these are more likely to warrant significant investigation for insurance and litigation issues. But while it is not a representative sample of all crane accidents, it is a large sample and may be suggestive of more general trends. The HAAG report states that of 141 employee fatalities among its reported crane incidents, 28 were operators, meaning there were approximately 4 times more non-operator employees killed than operators from crane accidents in this sample ((141–28)/28=4.03).[8] Similarly for injuries, out of 267 employee injuries, 29 were to operators, so that there were 8.2 non-operator injuries for every operator injury ((267–29)/29=8.2).[9] These two categories are not mutually exclusive (there are often injuries when there is a fatality).

As noted in more detail in the ''Benefits'' section of the Final Economic Analysis for this rule, three recent fatalities in particular illustrate the dangers from improper equipment operation that could be prevented by the evaluations included in this amendment to the standard. In one instance, the crane operator was not familiar with the controls of the equipment. In another incident, an operator hoisting pipes longer than he had previously hoisted used an improper boom angle, indicating that he did not possess adequate knowledge and skills to address the additional challenges of the task he was required to perform. In the third incident, a fatality occurred when an employee operated a new, unfamiliar machine with controls in different locations than the machines with which the operator was accustomed. While the employee's use of that equipment arose from unexpected circumstances, the result nonetheless demonstrates the risk inherent with operating a crane without a method to ensure the operator knows how to operate new equipment where there are differences in control locations and functions.

None of the commenters disagreed that OSHA does not need to make a separate determination of significant risk, nor did anyone challenge the relevance of any of the fatalities noted by OSHA. As explained in the ''Background'' and ''Need for Rulemaking'' sections of the preamble, commenters have raised serious concerns that the current level of risk would increase if OSHA did not continue the employer duty to ensure operator competency on the actual equipment they operate. The nearly unanimous message to OSHA is that crane operator certification is designed to ensure a basic level of general operating competency, but is not by itself sufficient to ensure that operators have the necessary skills and knowledge to operate all assigned equipment or to perform all assigned tasks safely in all workplace conditions.

## III. Summary and Explanation of the Amendments to Subpart CC

### *Discussion of the Final Rule's Organization and General Terms Used in Its Summary and Explanation*

The following discussion summarizes and explains each new or revised provision in this final rule and the substantive differences between the revised and previous versions of OSHA's crane operator requirements in subpart CC of 29 CFR part 1926. As a general matter, OSHA has reorganized this section of the rule to improve comprehension of the requirements. In the ''Background'' section of this notice, OSHA summarizes the rationale for making permanent the employer duty to evaluate operators and removing the requirement for certification by equipment capacity.

### *Paragraph (a)—Duty To Train, Certify or License, and Evaluate Operators*

Paragraph (a) sets out the employer's responsibility to ensure that each operator completes three steps before the employer permits the operator to

[6] The removal of the requirement for certification by crane lifting capacity is not implicated in this significant risk discussion because it removes a requirement and does not impose any new duties.

[7] Bureau of Labor Statistics, *Census of Fatal Occupational Injuries (2011 forward),* Fatalities to Crane and Tower Operators, series ID FWU50X53702X8PN00, available at *http://www.bls.gov/iif/data.htm.*

[8] The HAAG report, p. 31.

[9] Id.

operate equipment covered by subpart CC without continuous supervision. In the regulatory text, OSHA refers to this entire three-step process as ''qualification.'' Each operator must be trained to do the crane activities that will be performed, be certified/licensed in accordance with subpart CC, and be evaluated on his or her competence to safely operate the equipment that will be used. In addition, paragraph (a) sets out exceptions to these requirements for certain equipment, as well as continuing to note that qualifications issued by the U.S. Military to its non-uniformed employees satisfy OSHA's crane standard (OSHA continues to apply the term ''qualification'' within the final rule for operators working for the U.S. military, as it did in the previous version of the rule). The new approach provides a clearer structure than the previous format of the standard, which was not designed to accommodate both certification and evaluation.

In addition, the final rule makes clear that post-certification training is required. OSHA adopted this change because the previous version of the standard focused on pre-certification training. The final rule outlines the ongoing training necessary for certified operators to learn to operate new equipment or perform new tasks. The new final rule contemplates operators still needing additional training after they are certified, such as training to operate a new type of crane, perform new tasks, or handle new controls in a crane that differ from previous models they have operated. The employer is obligated to train employees, as necessary, even after they are certified, until the employer has evaluated them in accordance with paragraph (f). The training components are otherwise nearly the same under both the previous and revised versions of the standard.

As under the previous version of the standard, (see prior § 1926.1430(g)(2)), refresher training would also be required when indicated by deficiencies in the employee's demonstrations of crane knowledge or equipment operation.

The current certification/licensing requirement, which is the centerpiece of the previous operator requirements, remains largely unchanged under the revised standard, with the exception that different certifications for different capacities of cranes would no longer be required. The reference to ''certified/licensed'' is intended to encompass each of the certification options in the standard (third-party certification or an audited employer certification program) as well as state or local operator licensing requirements.

Several commenters requested that OSHA remove the existing requirement for operator certification from the standard (see, *e.g.,* ID–1605, 1615, 1821, 1826). These commenters faulted OSHA for failing to re-justify the requirement for operator certification or did not think it should be applied to their specific industry.

However, operator certification was central to the 2010 final rule, which was based on the industry stakeholder recommendations through a negotiated rulemaking. Comment was requested on the proposal in that rulemaking, and OSHA held several days of hearings on the proposal. OSHA published the rationale and justification for the inclusion of the certification requirement in the standard in the 2010 preamble, and so there was no need to re-explain the agency's lengthy analysis in this new rulemaking. In the NPRM for this rulemaking OSHA did not signal that it was considering removing certification: To the contrary, one of the main purposes of the rulemaking was to implement a change to the certification requirement (removing capacity) in recognition of the limited safety benefits of that requirement. This would reduce needless regulatory burden and ensure that the employers of a majority of operators would be able to comply with the certification requirement. OSHA also proposed to clarify and make permanent other employer evaluation duties, but those were proposed *in addition to* the operator certification requirements and the proposal re-organized the standard to encompass both.

With certification already a requirement of the standard, the main issue in this rulemaking besides the content of the certificate was the additional employer evaluation requirement. One commenter claimed that OSHA's ''policy shift'' to include additional employer evaluation duties in the current rulemaking ''demonstrates that even it does not believe that certification is necessary to verify basic crane operating skills and knowledge needed to safely operate the equipment'' (ID–1605, p. 2). OSHA disagrees. OSHA accepted the construction industry stakeholders' recommendation for a third-party certification requirement in 2010 after OSHA's previous construction cranes standard, which included a generic duty for employers to assess operators but no independent certification of the operator's knowledge or abilities, appeared ineffective in reducing fatalities and injuries caused by crane operator errors. OSHA proposed the employer evaluation in this current rulemaking as an *addition to* certification, not as an *alternative to* certification, because those provisions are intended to work in tandem as explained in more detail elsewhere in this preamble. The certification provides an independent assessment of general baseline knowledge and skill and the employer evaluation focuses on specific knowledge and skills needed for the safe operation of particular equipment for particular tasks.

OSHA also disagrees with the claim that adoption of a permanent requirement for employer evaluation of operators undercuts the need for certification (see also ID–1821). Many of the industry stakeholders who participated on the negotiated rulemaking committee (C–DAC) who recommended independent operator certification saw a need to verify baseline crane operating knowledge and skills, and OSHA incorporated that recommended requirement into its standard after public comment and extensive analysis, as explained at length in its 2010 final rule and accompanying preamble (75 FR 47905). But following that rulemaking, industry stakeholders noted a distinction between the basic operating knowledge and skill needed to pass a certification examination, on the one hand, and on the other the knowledge and skill needed to safely operate specific equipment to complete a specific task on a construction site. Employers had traditionally addressed this distinction when complying with OSHA's general construction requirement in § 1926.20(b)(4) (''The employer shall permit only those employees qualified by training or experience to operate equipment and machinery''). But the inclusion of specific operator training and certification requirements in the 2010 standard supplanted that general requirement, apparently to the surprise of some former C–DAC members, who then began advocating for a replacement (see *e.g.* ID–0539). With additional information from industry, the agency has taken action through this rulemaking to prevent individuals from performing construction work using even the types of machinery for which they are certified until employers confirm that they are sufficiently familiar with the particular machines they will operate and the specific tasks they will perform in order to ensure safety.[10]

[10] The employer evaluation requirements should also allay stakeholder concerns about the removal of the requirement for certification by different crane capacities, which OSHA had previously incorporated as a means of addressing significant

Continued

OSHA also disagrees with the assertion that OSHA had previously stated that certification would, by itself, eliminate unqualified operators, and that OSHA further stated that the ''intent of certification . . . was clear all along: The test would demonstrate the operator's technical knowledge specific to the equipment—meaning certification equated to qualification'' (ID–1605). In support of the claim, the commenter selectively quoted language in the regulatory text in previous § 1926.1427(b)(2) that operators would be ''deemed qualified'' to operate equipment once certified. However, OSHA used ''deemed'' in the description ''deemed qualified'' in the previous § 1926.1427(b)(2), as well as separate references to certification and qualification as alternatives, to avoid the impression that certification resulted in a fully qualified operator.[11] As OSHA previously explained in the NPRM, OSHA only used the term ''deemed qualified'' to recognize under a single rubric the full spectrum of options for complying with OSHA's standard: Certification, military authorization, state-licensing, and ''qualification by an audited employer program.'' (See 83 FR 23549, n. 10.)

Many commenters requested exemptions from the operator certification requirements or the entire rule. These comments, which included several mass mailings of identical or nearly identical comments, focused on exemptions for the use of cranes in three industries: Delivery and installation of propane tanks; using equipment attached to scaffolding to hoist loads up to the scaffolding; and using equipment to install signs (see, *e.g.,* ID–1184, 1631, 1830).[12] OSHA noted in the proposed rule that broad requests for exemptions from existing requirements were beyond the scope of this rulemaking, but requested comment on whether there should be exemptions from the revised *employer evaluation* requirements (83 FR 23544). Thus, exemptions from the revised employer evaluation requirements were the only exemptions OSHA proposed in the NPRM.

To the extent that commenters from these industries addressed employer evaluations of operators, they suggested that they were already performing the types of evaluations that would be required by the revised standard.[13] Indeed, despite the fact that employers in these industries have been required to perform some sort of operator assessment for the last eight years under § 1926.1427(k), they provided no examples of hardship or obstacles that have arisen during these assessments that would indicate that the new evaluation requirements would also pose an undue burden. OSHA is therefore not persuaded that employers in these industries should be exempt from the requirement to evaluate operators. Other than for operators of sideboom cranes, derricks, or equipment with a lifting capacity of less than two tons, the evaluation requirements in the new standard apply to all operators.[14]

The third element in the introductory text of revised paragraph (a) refers to the employer's duty to assess the operator to ensure that an operator has the skills, knowledge, and ability to recognize and avert risks to operate equipment safely. The updated duty to evaluate operators is similar to the duty in the prior version of the standard at § 1926.1427(k)(2)(i), which specified that employers must ensure that operators are able to operate equipment safely. That employer duty in the 2010 crane standard was scheduled to be phased out once the operator certification requirements become effective on November 10, 2018. In the final rule, OSHA is permanently retaining an employer assessment duty but has re-located it to paragraph (a) to increase comprehension of the standard's requirements. The revised standard also includes requirements for the individual who performs the evaluation and requirements for

differences between machinery within a single type of crane.

[11] In providing an overview of the function of the requirements of section 1427, OSHA used the terms ''certification'' and ''qualification'' separately in describing the process for compliance: ''In the final rule, paragraph (a) of this section specifies that the employer must ensure that the operator . . . is either qualified or certified to operate the equipment in accordance with the provisions of this section. . . .'' Also, in describing the alternative permitted under 1427(b), OSHA stated in the 2010 final rule: ''As noted above, the proposed rule provided four options for a crane operator to be qualified or certified.'' 75 FR 48017.

[12] One commenter from the pre-cast concrete industry requested an exemption from the certification requirements for operators of knuckleboom cranes, noting that these cranes ''are present in a large number of precast concrete plants'' (ID–1047). The commenter continued that ''[a]dding a national certification requirement for knuckle-boom cranes would not likely have an impact on improving safety within the plant . . . This assessment is backed by data from the Bureau of Labor and Statistics, which identifies general industry, of which the precast concrete industry is a part, as accounting for a significantly lower rate of workplace accidents involving cranes than the private construction industry.'' The commenter described the burden on ''these small manufacturers'' and also stated: ''While some precast concrete plants have crane operators who would need to be certified on other classes of cranes, there are likely thousands of plant personnel who operate only a knuckle-boom style of crane.'' Taken together, the references to the employers as manufacturers engaged in general industry work, the use of the cranes in ''the plant,'' and their presence in a ''large number of . . . plants,'' the commenter seems to misinterpret OSHA's construction crane rule as applicable to that industry's general industry activities. The operator certification requirement only applies when equipment is used for construction work, not for the manufacture of pre-cast concrete in a manufacturing plant. A different commenter (ID–1190) also requested an exemption for ''pre-cast concrete manufacturers'' and referred to ''drivers'' requiring certification. OSHA has previously clarified that manufacturers who simply deliver their products to the ground on a construction site are not considered to have engaged in construction activity, so the drivers in that scenario would not require certification under OSHA's construction cranes standard.

A different commenter, without identifying his industry, asked for an exemption for ''small truck mounted booms'' under the theory that employers, rather than pay for operators to be certified, would simply ''eliminate these valuable tools that will ultimately lead to more back injuries because proper tools are not available to the employee'' (ID–1373). OSHA notes that its standard already exempts from the certification requirement operators of ''equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less'' (revised 29 CFR 1926.1427(a)(2).

A third commenter noted his opposition to operator certification because ''I believe that there are only three entities that are recognized for this outside of the Operating Engineers for union shops. OSHA . . . must provide a clear process for employers to seek accreditation that is independent of the currently accredited entities'' (ID–0704). OSHA's standard does not restrict the number of third-party certifying entities or their accrediting bodies. OSHA's standard also allows individual employers to comply with the certification requirement by certifying their own employees through a program audited by a third-party (see revised 29 CFR 1926.1427(e)).

[13] For example, a representative of the propane industry explained that ''experienced propane field technicians provide hands-on training to new employees in coordination with or subsequent to review of written training materials'' (ID–1631). Their industry also ''utilizes competency training materials that provide training on the use of cranes to deliver and retrieve a propane container,'' and ''utilizes the crane training materials along with other industry-developed training materials to provide new training before an employee is assigned a new responsibility as well as at regular intervals to serve as refresher training'' (ID–1631). A representative of the precast concrete industry explained that their organization's ''engineers have visited hundreds of plants and have observed . . . owners ensuring operators competency'' (ID–1047). The rationale for the employer evaluation seems equally applicable to these industries and the commenters do not provide any persuasive evidence disputing that it is important that employers evaluate operators to assess whether they have the knowledge and skills to safely operate the equipment which they are assigned to use to perform construction tasks.

[14] One of the same group of commenters also suggested, if removal of certification is not an option, that OSHA consider allowing ''one certification based on function,'' such as a single certification for operators of propane delivery cranes (as opposed to a certification for each type of crane) (ID–1631). A different commenter requested that OSHA remove the existing exemption from the certification requirements for cranes with a lifting capacity lower than 2,000 pounds (§ 1926.1427(a)(3)), asserting that these smaller cranes can also pose safety hazards (ID–1475). Neither of these requests address any of the changes proposed in the NPRM and are therefore outside the scope of the rulemaking.

documenting the evaluation. It retains the previous duty for employers to re-evaluate operators when necessary (see previous § 1926.1430(g)(2)), but moves the requirement to the evaluation section to improve comprehension of the requirements (see full discussion of revised paragraph (f)—*Evaluation* below.)

Paragraphs (a)(1) to (3) provide limited exceptions to the general requirement in paragraph (a) that operators must be trained, certified, and evaluated before operating equipment.

Paragraph (a)(1) permits an employee to operate equipment as an ''operator-in-training'' prior to being certified and evaluated, provided that he or she is supervised and operates the equipment in accordance with the training requirements in paragraph (b). This is the only means by which an individual may operate equipment prior to being trained, certified, and evaluated as competent to do so. This exception is substantively similar to the provision in the previous crane standard at § 1926.1427(a), which permitted uncertified operators to operate equipment only when the employer complied with the requirements specified under previous § 1926.1427(f)—*Pre-qualification/certification training period.* The revised standard also permits certified/licensed operators to operate equipment as operators-in-training before successfully completing an evaluation. For example, this provision allows experienced and certified operators to become accustomed to performing new crane operations or operating somewhat different equipment while being evaluated by the employer for that purpose. It also allows a newly hired operator to run the equipment while a new employer gauges the operator's crane knowledge, operating skills, and training needs. In addition, experienced operators who are not certified may operate the equipment when all operator-in-training requirements are met.

The standard recognizes that on-the-job training is an important component of gaining the practical operating experience necessary to safely operate a crane and to pass a competency evaluation. Other employers agreed that, depending on a number of factors, determining the competency of a new, inexperienced operator to become an independent, safe, and efficient operator is a process that can vary in time depending in part on having a crane available and demand for the crane services (*e.g.,* Reports # 2, 11 of ID–0673). This competency process is often informal and integrated in day-to-day work, with operators-in-training working closely with experienced operators in on-the-job training who mentor them and show them how to use equipment (Reports # 1, 2, 3, 6, 11, 15, 16, 18, 19, 23 of ID–0673). Operators receive experience not only in the cab, but also in many tasks or operations related to hoisting, such as rigging, assembly/disassembly or set-up, or inspections. Moreover, many employers who train new operators require them to complete operator certification at the beginning, or in the middle of, their training program, while employer evaluation of competency is generally a later step in the process and may occur many times over an operator's career. Therefore, OSHA believes that permitting an operator-in-training to operate equipment under the conditions specified in paragraph (b) is appropriate and necessary to ensure the safety of operators-in-training while they train for competency evaluations by employers.

In addition, revised paragraph (a)(1) expressly states that an operator-in-training may only operate equipment *under supervision* to ensure that employers understand that supervision is a mandatory component of operating in accordance with revised paragraph (b), and therefore also required under this exception. Because the previous crane standard also required operators-in-training to be supervised, adding that requirement to paragraph (a) is a non-substantive, clarifying amendment (see paragraph (b) for a more thorough discussion of on-the-job and general training requirements).

OSHA did not propose any substantive changes to the existing exemptions for derricks, sideboom cranes, and equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less from the training and supervision requirements in revised paragraph (b) and the certification/licensing requirements in revised paragraphs (c) and (d).

OSHA did propose a change to the regulatory text in § 1926.1427(a)(2). While the prior regulatory text in § 1926.1427(a) had excepted operators of this group of equipment from only the ''Operator qualification or certification'' requirements of section § 1926.1427, corresponding scope provisions in § 1926.1436(q) (derricks), § 1926.1440(a) (sideboom cranes), and § 1926.1441(a) (cranes with capacity of a ton or less) each specify that *none* of the requirements of § 1926.1427 apply to operators of those types of equipment. Therefore, OSHA proposed in the NPRM to better align § 1926.1427 with §§ 1926.1436, 1926.1440, and 1926.1441. However OSHA proposed to apply the new employer evaluation requirement to operators of these types of equipment, so the proposed language of § 1926.1427(a)(2) included an exception from only the certification ''and training'' requirements of § 1926.1427 (see also the discussion of the proposed amendments to §§ 1926.1436, 1926.1440, and 1926.1441). In light of OSHA's decision not to apply the new evaluation and documentation requirements to operators of this group of equipment (see discussion of revised paragraph § 1926.1427(f) later in this preamble) OSHA has revised the paragraph to preserve the previous categorical exclusion for this group of equipment from all of the requirements in § 1926.1427.

In the NPRM, OSHA also proposed a new note to § 1926.1427(a)(2) to specify that operators of sideboom cranes must comply with § 1926.1430, which contains the general training requirements in the cranes standard. Sideboom cranes were not previously exempted from the training requirements in § 1926.1430, but training is not expressly addressed in the section of the standard dedicated to these cranes, § 1926.1440. OSHA, therefore, proposed this note to clarify the training requirements that operators of this equipment had to meet. OSHA is retaining the note in the final rule. OSHA did not receive any comments on the note in proposed paragraph (a)(2).

Paragraph (a)(3) preserves a previous provision that states that non-uniformed personnel employed and qualified as operators by the U.S. military meet the licensing/certification requirements of § 1926.1427. OSHA moved this provision from the other certification/qualifications options because it operates as an exception: It specifies that no certification/licensing or training obligation for construction employers is needed beyond verifying that the employee is employed by, and qualified by, the military. For the purpose of confirming that a military operator has the basic crane knowledge and operating skills required through licensing and certification, OSHA defers to the operator qualification process of the U.S. military as the employer. All of the provisions of the crane standard apply when an operator operates equipment for an employer other than the U.S. military.

OSHA requested comment on whether the relocation of this provision was appropriate and whether it is clear that this is an exclusion from all qualification and training requirements of this standard, not just certification.

OSHA did not receive any comments on the introductory text or restructuring of paragraph (a) (other than the requests for additional exceptions, as addressed earlier). OSHA is therefore adopting the changes as proposed.

*Paragraph (b) Operator Training.*

The requirement for employers to train and evaluate operators before permitting them to operate equipment is contained in paragraph (a). Paragraph (b) now sets forth minimum requirements for training, specifies requirements for trainers, and establishes limitations on the scope of activities for operators-in-training. This paragraph specifies the conditions under which an individual may operate a crane prior to acquiring certification or successfully completing an employer evaluation. These training provisions are intended to provide a safe avenue for employees to gain experience operating cranes in a variety of circumstances.

The training requirements of revised paragraph (b) are largely the same as the previous rule but also clarify that employers must continue to address operator training needs after the operator has been certified and demonstrated competency through employer evaluation on specific equipment. Paragraph (b) further clarifies that the employer's training duty is both equipment-specific and task-specific, and extends until the employer has satisfactorily evaluated the operator-in-training in accordance with paragraph (f)—*Evaluation,* or if any retraining or subsequent training is required to perform the assigned tasks. The revised standard recognizes that even a certified and evaluated operator may need additional training to safely operate new equipment or perform significantly different types of lifts. Therefore, the employer's duty to train remains an ongoing responsibility that must be met as the operator's experiences expand. The prior version of the standard was not as clear (except with respect to when an individual's deficient operating performance or crane knowledge triggers retraining) that the employer's duty to train extends beyond when the individual is certified and evaluated. This updated paragraph clarifies that the employer's duty to train is aimed at ensuring that the employee can safely use the equipment that will be operated.

Under the previous standard, OSHA divided the training requirements between two sections. First, previous § 1926.1427(f)—*Pre-qualification/certification training period,* set forth the limited conditions under which an operator-in-training could safely operate equipment before being certified. Secondly, previous § 1926.1430—*Training Requirements,* brought together the triggers for operator training requirements, including those for retraining. As discussed in the explanation for this section, OSHA has removed the substantive operator training requirements from § 1926.1430 and replaced them with a cross-reference to new § 1926.1427(b) so that the substance of the training requirements for operators, as well as all operator-in-training requirements, are under one section. Relocating the requirements of previous § 1926.1427(f) to revised § 1926.1427(b) also ensures that the organization of the crane operator requirements corresponds with the order of a typical operator competency program—*i.e.,* initial training generally precedes certification and an operator being determined competent by employer evaluation.

The introductory language to paragraph (b) in the NPRM required the employer to ''provide each operator-in-training with sufficient training, through a combination of formal and practical instruction, to ensure that the operator-in-training develops the skills, knowledge, and judgment necessary to operate the equipment safely for assigned work.'' (83 FR 23567). OSHA is retaining this language in the final rule except for one change. For reasons discussed later in response to comments to paragraph (f), OSHA decided to remove the term ''judgment'' from that section and replace it with ''the ability to recognize and avert risk.'' OSHA is making the same change in the training section. OSHA proposed corresponding language in the training and evaluation sections because an operator-in-training should be trained and evaluated to the same standard. In addition, this revised requirement specifies that training must include a combination of formal and practical instruction.

OSHA notes that this paragraph (b) does not mean that employers must provide novice-level or redundant training when they hire an experienced operator as a new employee. An employee who is an experienced operator may need far less training than a less experienced employee. Employers must determine what level of practical and formal training an operator-in-training would need under paragraph (b) to ensure that they develop the skills, knowledge and ability to recognize and avoid risks necessary for safe crane operation in a variety of conditions. Ultimately, the training methods chosen by the employer must be effective and responsive to each operator's training needs.

One commenter, while urging OSHA to remove the requirement for operator certification, also urged OSHA to ''limit the operator training requirements to employer-based programs that can best be customized to train operators on the specific equipment used at each individual company'' (ID–1826). OSHA is not altering the training requirements in paragraph (b), which require training on the subjects listed in § 1926.1427(j)(1) and (2). OSHA believes these requirements provide enough flexibility to allow an employer to efficiently customize its training programs. For example, the standard continues to require the operator to have knowledge of ''the information necessary for safe operation *of the specific type of equipment* the individual will operate'' (§ 1926.1427(j)(1)) (emphasis added). There are some general requirements not tied to the operation of particular machines, such as the requirement for training on ''Procedures for preventing and responding to power line contact,'' that address serious hazards that vary by location, not equipment. The mandated training criteria are longstanding requirements that were adopted by OSHA on the recommendation of its negotiated rulemaking committee because most were included in OSHA's pre-2010 cranes standard (§ 1926.550) or were in industry consensus standards.

A different commenter suggested that OSHA incorporate requirements from the Powered Industrial Truck standard into the crane operator training requirements. This recommendation included more prescriptive language in the regulatory text language specific to training on the controls and instrumentation of the equipment, the operator's manual, and when further training is required (ID–1719). Although the commenter acknowledges that ''the proposed rule offers clear guidance on the subject matters that initial training must cover,'' it believes its recommended revision is necessary to ''provide sufficient guidance on the triggers for supplemental training and re-training/remedial training'' (ID–1719).

OSHA is not convinced that more prescriptive language for operator training requirements is required. OSHA believes that the incorporation of the paragraph (j), and subsequently Appendix C, provides employers with thorough lists of subjects on which operators must be trained, including elements such as the equipment's controls. OSHA concludes that the more flexible, less prescriptive language

proposed for the training requirements is more appropriate for crane operator training than the prescriptive list of elements offered by the commenter.

OSHA has not retained the introductory text in previous paragraph (f), which required that a non-certified employee could only operate as an operator-in-training within the limitations of paragraph (f). That introductory text has now been supplanted by the language in revised paragraphs § 1926.1427(a)(1) and (b), without substantive change other than the addition of the evaluation requirement.

Most of the specific training requirements in paragraph (b) are identical or similar to the previous training requirements. Paragraph (b)(1) requires the employer to provide the operator-in-training with instruction on the subjects in paragraph (j). This requirement is identical to the requirement in previous § 1926.1430(c)(1)—*Operators-in-Training for equipment where certification or qualification is required by this subpart.* However, under the revised standard, even after the operator-in-training is determined competent by employer evaluation, the employer's training duty can continue when the operator operates new equipment or performs tasks that require new skills or knowledge. An individual may be a fully certified and evaluated operator with respect to one piece of equipment such that he or she is allowed to operate that equipment independently, but simultaneously be an operator-in-training (and thus subject to the operating restrictions in the standard) with respect to different equipment or tasks that require significantly different skills or knowledge to ensure safety.

Section 1926.1427(j)—*Certification criteria,* which remains unchanged, specifies the mandatory subject matter for third-party licensing and certification, as recommended by C–DAC. It requires a written and a practical test. Paragraph (j)(1)(i) specifies areas of information that must be covered by the written certification test for the type of crane that an individual will operate, such as controls, operational/performance characteristics, load calculations, and ground conditions. This paragraph also references a more comprehensive list of areas of technical knowledge in Appendix C—*Operator Certification: Written Examination: Technical Knowledge Criteria.* Paragraph (j)(2) identifies the operating skill areas that must be covered by the practical certification test.

OSHA concludes that operators-in-training must continue to receive training in the subject matter identified in this section as recommended by C–DAC. However, as proposed, OSHA relocated the training requirement in § 1926.1430(c)(1) to revised § 1926.1427(b) so that the requirements for operators-in-training may all be found in one place. New language in revised § 1926.1430—*Training,* discussed separately below in this preamble, references § 1926.1427(a) and (b) rather than repeat the same requirement.

Paragraph (b)(2) requires the employer to ensure that a trainer continuously monitors operators-in-training during all crane operations. This requirement is identical to the previous requirement for continuous monitoring under previous paragraph (f)(3).

Paragraph (b)(3) requires the employer to assign the operator-in-training only tasks that are within his or her ability. This requirement is substantively identical to the requirement under previous paragraph (f)(2). OSHA made minor changes to the language of this requirement to clarify that it is the employer's duty to assign tasks to the operator-in-training.

OSHA also relocated the requirements of previous paragraph (f)(1). The previous paragraph (f)(1) required the employer to provide each operator-in-training with training sufficient to operate safely under the limitations of previous paragraph (f). Its requirements are retained in revised paragraphs (b)(1) and (3), which state that the operator-in-training must be trained on the subject matter specified in paragraph (j) of this section and may only perform tasks that are within his or her abilities.

Paragraph (b)(3) retains a revised version of the limitations specified in previous paragraph (f)(5), which precluded operators-in-training from operating equipment next to energized power lines; from hoisting personnel; or from performing multiple-equipment lifts, multi-lift rigging operations, or lifts over shafts, cofferdams or in a tank farm. OSHA previously determined in the 2010 final rule that these equipment operations and worksite conditions are too complex, or present such heightened risks, that it would be unreasonably dangerous if an operator-in-training were to operate the equipment in these circumstances (75 FR 48024). However, in the NPRM OSHA announced that it would consider revising these limitations because they may have the effect of preventing operators from gaining the experience necessary to conduct these lifts.

OSHA received comments supportive of removing these limitations on operators-in-training. A labor union commented that these tasks ''should not be prohibited'' because ''an operator must be trained in how to safely perform them'' (ID–1615). Another commenter, in urging OSHA to remove operation in tank farms from the list, argued that ''[t]he continuous monitoring requirement specified in the Rule along with other safe work practices (*e.g.,* work permits, joint jobsite visits, etc.) are sufficient to identify and mitigate hazards that an operator-in-training may encounter in a tank farm'' (ID–1647). OSHA did not receive additional comments on this issue.

In response to these comments, OSHA revised the language of the regulatory text to provide a measured expansion of the prior rule that removes the prohibition as requested by the commenters. Operators-in-training will now be allowed to perform these lifts, but only if they have been certified in accordance with § 1926.1427(c). The 2010 crane standard only allowed an operator to perform these lifts after becoming certified, so OSHA is preserving the status quo in that respect. OSHA continues to agree with C–DAC that these lifts are too complex and potentially dangerous to be attempted by an operator candidate who may lack the basic knowledge and skills required for general crane operation. But the prior regulatory text left no way forward for even a certified operator to gain the experience necessary to perform those functions safely, and did not leave room for an employer to have an operator evaluated on these tasks in accordance with revised § 1926.1427(f). This language change therefore respects C–DAC's intent to prevent operators who have not acquired the baseline knowledge of crane operation provided by certification from performing these complex lifts, while allowing operators-in-training the opportunity to train performing these lifts under the direction of a trainer prior to being evaluated to perform these lifts as an operator. Note that the employer must still train the operator on these specialized lifts before allowing the operator to attempt them, even under supervision, because paragraph (b)(3) only permits the employer to assign tasks to an operator-in-training that are ''within the operator-in-training's ability.''

Paragraph (b)(4) prescribes minimum requirements for monitored training of operators-in-training and trainers who monitor operators-in-training. Revised (b)(4)(i) specifies requirements for the

required trainer which are similar to requirements in paragraph (f)(3) of the 2010 crane standard. Paragraph (b)(4)(i)(A), which requires that the trainer must be an employee or agent of the operator-in-training's employer, is identical to paragraph (f)(3)(i) of the 2010 crane standard.

Paragraph (b)(4)(i)(B) requires that the trainer must ''have the knowledge, training, and experience necessary to direct the operator-in-training on the equipment in use.'' This requirement is the same as the proposal but is different from the requirements of paragraph § 1926.1427(f)(3) of the 2010 crane standard, which required that a trainer either be a certified operator or have passed the written part of a certification test, and have familiarity with the equipment's controls. This revision recognizes that some uncertified trainers may have the knowledge and experience to be competent to teach or monitor the equipment operations of an operator-in-training.

In the NPRM, OSHA explained that it proposed this change for three reasons. First, merely requiring that the trainer must have passed the written part of a certification test is insufficient to confirm a trainer's ability to train other operators. Paragraph (f)(3) of the 2010 crane rule presumed that all certified operators or individuals who passed only written certification tests have the skills to monitor an operator-in-training, but as explained above, certification alone is insufficient to ensure that operators are competent to safely operate a crane. Under the final rule, even after the basic crane knowledge and operating skills of operators have been confirmed through certification testing, employers must still determine through evaluation if operator training already provided is sufficient or if more is necessary, based on the complexity of equipment that will be used and activity that will be performed. Thus, requiring an individual to pass a written certification exam appears to be likewise insufficient as the sole criterion for confirming a trainer's ability to monitor and train an operator-in-training.

Second, using certification as a required criterion for the trainer could exclude individuals from the role who have extensive operating experience and familiarity with the controls of the relevant equipment but do not possess a certification. Under the trainer requirements of the 2010 crane rule, an experienced but uncertified operator may have been required to be monitored by a less experienced but certified individual. In stark contrast, an uncertified person who has significant experience operating the particular equipment used during the training may have more insight into the function of its controls and the nuances of its operation than someone who is certified for that type of equipment but has never operated that particular equipment. Allowing only certified operators in these training roles is also inconsistent with the industry practice of pairing inexperienced operators with experienced trainers who monitor the safety and professional development of the inexperienced operator.

Third, passing a written certification test is not a definitive indicator of safe training practices in the industry and requiring certification of all trainers could significantly alter many previous work practices in the industry. Stakeholder feedback suggests that many different employees or agents of an employer successfully fulfill the role of a trainer but may not be certified. Some formal training might be administered by an individual who is not certified but has extensive knowledge of a particular make and model of crane. For example, some crane manufacturers offer technical training to their customers regarding the operation, maintenance, and troubleshooting of cranes they sell (see Reports # 4, 5, 13 of ID–0673). On-the-job training is often conducted by a seasoned crane operator with years of experience (see Reports # 1, 2, 19, 23, 28 of ID–0673) or in some cases by a retired operator (see Report # 26 of ID–0673). These operators may no longer be certified. In addition, an employer might employ various non-certified employees, such as an experienced safety manager, foreman, or site manager, to monitor some work training activities, or an experienced small business owner might fill the role of trainer in some cases (see Reports # 1, 2, 15, 26 of ID–0673). And OSHA spoke with three companies that offer other employers private training from experienced operators who are not certified (see Reports # 20, 21, 22 of ID–0673). In sum, stakeholders reported that some individuals who have the necessary knowledge, training, and experience but do not possess a certification or have not passed the written certification exam can, nevertheless, be successful trainers.

In the proposed revision of this provision, OSHA proposed language similar to the requirement in ASME B30.5 (2014) at 5–3.1.2(e) that training must be performed by a ''designated person who, by experience and training, fulfills the requirements of a qualified person.'' The language is also similar to the ''qualified person'' definition that is familiar to the construction industry. Under this language, employers have some flexibility in determining the level of knowledge and experience that the trainer must possess based on the skill level of the operator-in-training and the nature of the activity performed.[15]

OSHA received comments supporting the proposed changes to the trainer criteria. A trade association agreed with the proposed language because it provides employers with ''flexibility in determining the level of knowledge and experience that the trainer must possess based on the skill level of the operator-in-training and the nature of the activity performed . . . even when the individual has not passed the written certification exam, possesses an operator certification, or has prior experience operating a crane'' (ID–1801). One commenter agreed with OSHA that certification or passing the written part of the certification test is not determinative of whether an individual can train an operator-in-training, stating that it ''fails as a measure of a trainer's competencies and capabilities'' (ID–1821). Similarly, a comment supporting the proposed language asserted that ''[t]he current requirement that trainers obtain certification or at least pass the written portion of the certification requirement does not necessarily correlate with the individual's ability to provide practical instruction or impart valuable knowledge to other employees'' (ID–1631).

A different commenter supported the ''requirement that the trainer should be a 'qualified person,'" as defined in the cranes standard, without other requirements (ID–1828). OSHA believes that the proposed new language, which the commenter did not directly oppose, comes close to that approach while still providing the additional focus on the training.

Several other commenters opposed the proposed change and preferred that the trainers at least pass the written portion of the certification exam. One commenter responded that trainers possessing certification have been ''a long established standard and best practice among the industry,'' and interprets ASME B30.5's term ''qualified operator'' to mean ''one who possesses a certification for the type of equipment for which he/she is instructing an operator-in-training'' (ID–1816). OSHA disagrees with that interpretation of

[15] OSHA expects that in many cases, the trainer will possess a certification. However, this final rule allows the possibility that the trainer's experience with the task and equipment used could be sufficient for providing training even without the trainer possessing a certification.

ASME B30.5 because that definition, like the definition of ''qualified person'' in OSHA's cranes standard, clearly states that certification is only one of two paths to become a qualified person.[16]

That commenter also compared operator certification to a driver's license and stated that ''one would not want a driving instructor who herself does not possess a driver's license,'' (id.), but there may be many reasons why an experienced crane operator may no longer possess a valid certification. Many seasoned crane operators who have safely operated cranes for decades have the knowledge, operating experience, and ability to effectively train and direct an inexperienced operator even though they never had a need to acquire a certification during the course of their operating careers or let their certifications expire after transitioning into new roles. Contrary to the commenter's assertion, the seasoned operator may be preferred as a trainer because of the greater experience, particularly if that experience is with the particular equipment that will be operated. OSHA concludes that the emphasis of the trainer qualifications should be on a person's ability to train and direct an operator-in-training, rather than whether the trainer possesses a certification.

Another commenter stated that it is ''infeasible to consider how a trainer or evaluator can determine an operators qualifications if they have never operated a crane . . . OSHA should consider going to the original definition they are using for the trainer'' (ID–1623). That comment incorrectly assumes that trainers without a current certification, or those who have not passed the written portion of a certification exam, have not previously operated a crane. In some cases, the trainers may be retired or semi-retired operators who are fully capable of training other operators but who have not elected to take an operator certification examination because they no longer operate cranes. The record of the 2010 rulemaking and this rulemaking also contains a number of statements indicating that some employers have very experienced operators who have difficulty with written exams (see, *e.g.,* 73 FR 59816–59817). In some cases, the language or literacy barriers that impede an experienced operator from passing a written exam may have no relevance to that person's ability to instruct an operator-in-training. OSHA does not agree that such a trainer should be disqualified from training an operator so long as there is effective communication between the operator-in-training and the trainer.[17]

One certification organization conceded that ''certification may not be an appropriate 'sole' criterion or a sufficient indication of competence as a trainer,'' but contended that it is an ''appropriately necessary condition of establishing such competence and ensuring a 'baseline' of knowledge and skills'' (ID–1755). That commenter suggested that OSHA go further than the previous rule and require that trainers be both certified *and* possess the requisite knowledge, training, and experience.

OSHA does not agree that it is necessary to go as far as the commenter suggests in order to ensure that appropriate trainers are instructing operators-in-training. As stated earlier, OSHA anticipates that many trainers will be certified operators. As one commenter noticed, the proposed language ''does not preclude employers from following the existing trainer requirements if they so choose'' (ID–1801). Moreover, a certification could provide partial evidence of the knowledge, training, and experience necessary to train an operator-in-training, but is not sufficient for verifying competency and safe crane operation. The requirement for even a partially certified trainer would come at the price of excluding the experienced trainers currently relied on by the earlier commenter (ID–1826). The final rule will preserve greater flexibility for the employer seeking to ensure safety through available resources, and is also more closely aligned with the existing industry guidance in ASME B30.5.

One of the certification organizations asserted that ''[r]equiring that a trainer have a baseline of knowledge and skills as an operator is likely, not only to improve the quality of training, but also to increase safety during training in the event the operator-in-training engages in an unsafe act and the trainer is forced to intervene'' (ID–1755). The agency agrees that it is important for the trainer to be able to direct an operator-in-training should their operation potentially result in an incident or near miss and has included that requirement in the standard (''Have the knowledge, training, and experience necessary *to direct* the operator-in-training on the equipment in use''). But requiring that a trainer must have passed the written part of the certification test does not indicate that a trainer would be able to do more. OSHA's standard, both as revised and prior to this revision, does not permit anyone other than a certified operator to be at the controls absent supervision, so a trainer who has only passed the written exam would not be permitted to operate the crane without another person serving as a trainer to that person. It does not follow that a person who has passed the written portion of the certification exam, but not necessarily demonstrated any practical skill at operating a crane, would be inherently better prepared to correct an operator than a person who has the knowledge, training, and experience necessary *to direct* the operator-in-training on the equipment in use.

It is true that a trainer who is a certified operator (and properly evaluated under the new standard) would be permitted to sit in the cab and take over the controls in the event of perceived unsafe action, but there is no record that this is a common occurrence or has been shown to be effective. In the absence of a clearer record on this point, OSHA is hesitant to disturb C–DAC's judgment that requiring all trainers to be fully certified operators was unnecessarily restrictive (see 75 FR 48024). In its 2008 NPRM explanation of the trainer requirements, which were included without change in the final rule, OSHA acknowledged that full certification was unnecessary and explained that the trainer's knowledge of the particular equipment being operated was paramount to certification:

> The Committee determined that a supervisor who had passed the written portion of a certification test would not need to be sufficiently proficient to pass the practical portion in order to effectively supervise a trainee/apprentice. However, both in the instance where the supervisor is certified and in the instance where he/she is not certified but has passed the written portion of the certification test, the Committee believed that it is necessary that he/she be familiar with the proper use of the equipment's controls, since such knowledge is essential to being able to effectively supervise a trainee/apprentice.

(73 FR 59815 (Oct. 9, 2008)). OSHA does not find any of the comments persuasive enough to further restrict

[16] See definition of ''qualified person'' in ASME B30.5 (2004) (''by possession of a recognized degree in an applicable field or certificate of professional standing, *or* who, by extensive knowledge, framing, and experience . . .'') (emphasis added).

[17] A different membership organization agreed with OSHA's proposal and drew on its members' experience in using experienced but un-certified instructors. The commenter considered OSHA's revised language ''appropriate'' because members of their organization often assign as trainers experienced operators who may not have passed the written certification exam, but have more experience with the equipment than some certified operators. (See ID–1826). Not moving forward with the proposed language, this commenter warned, ''would prevent certain operators who are highly qualified, experienced and knowledgeable on certain equipment from serving as trainers'' (ID–1826).

employer options or to shift the focus away from the trainer's knowledge of the equipment to be used by the operator-in-training.

As stated previously, OSHA proposed language for its similarity to language from ASME B30.5 and OSHA's qualified person standard, and the flexibility it offers employers in choosing trainers for their crane operators. OSHA considered simply requiring a trainer to be a ''qualified person,'' but relying solely on the definition of qualified person as criteria for trainers presents a problem. In § 1926.1401, OSHA defines a qualified person as one ''who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.'' However, even under the previous standard OSHA did not intend for the possession of a certificate to be enough for an individual to be a trainer—the previous standard also required knowledge of the equipment's controls. Relying on the definition of ''qualified person'' in the crane standard as the lone criteria for trainers would mean that anyone possessing a certificate would automatically be a ''qualified person,'' regardless of their knowledge of any of the controls or other aspects of the equipment to be operated. OSHA will retain its proposed language.

The remainder of paragraph (b)(4) does not contain any substantive changes from the previous rule, did not receive any comments, and is promulgated as proposed. Paragraph (b)(4)(ii) prohibits the trainer from performing any task that detracts from his or her ability to monitor the operator-in-training. It is identical to previous paragraph (f)(3)(iii).

Paragraph (b)(4)(iii) requires the operator's trainer and the operator-in-training to be in each other's direct line of sight, and that they communicate verbally or with hand signals. This requirement is substantively the same as previous paragraph (f)(3)(iv), with minor simplifying changes. The revised standard relocates this provision to an independent subparagraph to clarify that the employer has the ultimate responsibility for ensuring compliance with this requirement. This revised paragraph also retains an exception for tower cranes so that the trainer and operator-in-training must be in direct communication with each other, but are not required to maintain a direct line of sight because the height of the operator's station may make it infeasible. (See also, the discussion of previous paragraph (f)(3)(iv) in the preamble to the 2010 final crane rule at 75 FR 48024.) This exclusion in this final rule is also substantively the same as paragraph (f)(3)(iv) of the 2010 crane rule, with minor simplifying language changes.

Paragraph (b)(4)(iv) requires that an operator-in-training be monitored while operating the equipment at all times except for short breaks and retains the conditions specifying monitoring under paragraph (f)(4) of the 2010 crane rule. Paragraph (b)(4)(iv)(A) requires that a trainer's break while the operator-in-training runs the crane can last no longer than 15 minutes and can occur no more than once per hour. Paragraph (b)(4)(iv)(B) requires the employer to ensure that the trainer and operator-in-training communicate about the tasks, if any, that can and cannot be performed in the trainer's absence while on break. Paragraph (b)(4)(iv)(C) limits tasks performed during the trainer's break to only those that are within the abilities of the operator-in-training.

Paragraph (b)(5) requires the employer to provide retraining when, based on the performance of the operator or an assessment of the operator's knowledge, there is an indication that retraining is necessary. This language is identical to the requirement in previous § 1926.1430(g)(2) but is included in paragraph (b) to consolidate all substantive training requirements to the extent practical for operators covered under § 1926.1427. Because the requirements of § 1926.1430(g) apply more broadly to all employees covered by this standard, however, OSHA is not deleting that requirement from § 1926.1430(g). Thus, identical language will appear in two different paragraphs of the final standard. This retraining requirement is consistent with the retraining described as already implemented by employers who spoke with OSHA during interviews and site visits (see Reports # 1, 2, 3, 15, 18, 19, 22, 26 of ID–0673). Note that the need for retraining under paragraph (b)(5) would also trigger the requirement for re-evaluation under paragraph (f)(7) (see also preamble discussion below of paragraph (f)—*Evaluation*).

OSHA received one substantive comment proposing revisions to the retraining requirements. The commenter recommends incorporating language from the Powered Industrial Trucks standard that states when retraining is necessary, including unsafe operation, an accident or near-miss, a failed evaluation, or insufficiency of training (ID–1719). OSHA does not believe this is necessary because the revised retraining requirements allow the employer to determine whether an operator needs additional training based on their performance and their knowledge. This final rule not only requires that retraining be triggered based on an operator's performance, but it also requires an employer to conduct retraining if the operator indicates it is necessary (see revised § 1926.1427(b)(5)). OSHA concludes that this approach gives employers more flexibility in determining when retraining is needed to ensure safety.

One commenter also noted that OSHA uses the words ''retraining'' and ''refresher training'' interchangeably in proposed paragraph (b)(5) without defining either term, and requested clarification (ID–1719). Another commenter agreed that additional clarification would be helpful.[18] In response to such comments, OSHA will replace the term ''refresher training'' with ''retraining''.

*Paragraph (c) Operator Certification and Licensing.*

At the ACCSH meeting on March 31–April 1, 2015, ACCSH members unanimously recommended that OSHA move forward with a rulemaking that retains certification and permanently extends the employer's duty to ensure the competency of operators (OSHA–2015–0002–0037). Paragraph (c) retains the certification and licensing structure of the 2010 crane standard with only a few minor modifications intended to improve comprehension of certification/licensing requirements.

First, OSHA moved the military qualification provisions of previous § 1926.1427(e)(4) to the exception in paragraph (a), as noted earlier.

Second, OSHA removed the reference to an ''option'' with respect to mandatory compliance with previous state and local licensing requirements.

[18] ''OSHA discusses in detail an employer's obligation to provide ongoing training as necessary when an operator's experience expands or is assigned to operate new equipment or perform new tasks. However, this concept is not explicitly stated anywhere in the proposed regulatory text. Only refresher training, required when indicated by deficiencies in the employee's demonstrations of crane knowledge and equipment operation, is present in proposed paragraphs (b)(5) and (f)(5), which do not apply to new equipment or an expansion of experience. If OSHA's intent is to clarify an employer's obligation to provide ongoing training, we believe the proposed regulatory text fails to make this clear.'' (ID–1801). In response to the comment that OSHA does not explicitly include ongoing training provisions in the regulatory text, the agency disagrees. This requirement extends from the duty in paragraph (b)(1) that employers must train operators to ensure they have the knowledge, skills, and ability to recognize and avert risk necessary to operate the equipment safely for assigned work. This ongoing training requirement need not be restated elsewhere in the regulatory text.

When a state or local government issues operator licenses for equipment covered under subpart CC, and that government licensing program meets the requirements specified in the standard, then employers must ensure that equipment operators are properly licensed when working in the state or local jurisdiction, even if the operator is also certified by a nationally accredited certification organization. However, the state or local license would satisfy OSHA's certification requirement: OSHA will not *require* an operator who obtains such a state or local license to also obtain a separate certification from a nationally accredited certification organization or an employer-audited program.

The content of revised paragraph (c)(1) is virtually identical to provisions in § 1926.1427(e)(2) of the 2010 crane rule, with one exception: Revised (c)(1)(v). For a more detailed explanation of the other provisions in this paragraph, see the preamble discussion of § 1926.1427(e)(2) in the 2010 crane rule at 75 FR 48021–23 (August 9, 2010).

As in the 2010 crane standard, this final rule includes minimum ''federal floor'' criteria for state and local crane operator licensing. If a license does not meet the minimum ''federal floor'' criteria specified in OSHA's crane standard (see revised § 1427(c)(1) and (j)), then the state or locality could still enforce its own licensing requirements, but employers operating cranes for construction within that jurisdiction could not rely on that license to satisfy OSHA's operator certification requirement. The employer must then comply with one of the other options for certification/qualification specified by this final rule. In the NPRM, OSHA proposed amending § 1926.1427(c)(1)(v) to add a new requirement to the ''federal floor'': The license must specify the ''type, or type and capacity'' of equipment for which the license is applicable. The purpose of this proposed change was to make it easier to determine whether the licensing procedure required the operator to have knowledge about the ''type'' of crane to be operated, as required by OSHA's standard in § 1926.1427(j)(1).

OSHA received three comments (ID–1611, 1779, 1824) warning that inserting any additional requirements into the ''federal floor'' for state or local licenses could make it more likely that some states or localities would not meet that ''federal floor.'' For employers in jurisdictions where the state or local licensing program did not comply with the federal floor, they would need to ensure that their operators were not only licensed as required by the state or locality but also certified through a third-party program or audited employer program in order to comply with OSHA's standard. One commenter expressed concern that OSHA's proposed change would result in ''duplicative or multiple layers of identical certification requirements'' for employers, and that a change designed primarily to facilitate compliance (rather than to add a substantive safety requirement) would not warrant the potential impact for employers (ID–1779). ''Provided that the state or local licensing requirement is in fact equivalent or more stringent than the OSHA expectation of determining competency,'' the commenter stated, ''then duplicative certification is unduly burdensome, especially for small businesses'' (Id.).

OSHA is sensitive to concerns raised about unnecessary regulatory duplication, particularly when the purpose of the change is to facilitate compliance rather than adding a new safety measure. To avoid needless burden, OSHA has decided not to implement the proposed change. Proposed paragraph (c)(1)(v) has been removed and proposed paragraph (c)(1)(vi) is designated (c)(1)(v).

The remainder of the requirements of paragraph (c)(1) are substantively the same as those in § 1926.1427(a)(1), (a)(2), and (e) of the previous rule, except that OSHA combined the requirements of those three paragraphs into one paragraph and clarified some of the language to facilitate better comprehension of state or local government entity requirements. Paragraph (c) restates more clearly the requirement in previous paragraph (a)(1) that the employer must ensure operators are certified and licensed. Paragraph (c)(1) substantially incorporates the requirements of previous paragraph (a)(1)(i) and combines it with the licensing criteria in previous paragraph (e)(2)(i)–(iv). Paragraph (c)(1)(v) is substantially the same as previous paragraph (e)(3)(ii).

Paragraph (c)(2) specifies the certification requirements for two remaining situations: The construction occurs in a state or local jurisdiction that does not require licensing of equipment operators, or the construction occurs in a state or local jurisdiction where the licensing program does not meet the ''federal floor'' of requirements established in this standard. In each of those situations, the operator would have to be certified in accordance with paragraph (d) (third-party certification) or (e) (audited employer program) of this section. Paragraph (c)(2) is identical to previous § 1926.1427(a)(2), except that it references only the paragraphs containing criteria for certification by an accredited testing organization and an audited employer program—and not the option for qualification by the U.S. military which is addressed as a scope exclusion in Paragraph (a)(3). Revised paragraphs (d) and (e), discussed later, correspond to previous paragraphs § 1926.1427 (b) and (c), respectively.

Paragraph (c)(3) requires employers to provide at no cost to employees the certification or licensing required by § 1926.1427. This revised requirement is almost identical to that of § 1926.1427(a)(4) of the previous rule, except that it has been revised to clarify that it applies to all operators certified or licensed after the effective date of the new standard, not just those operators who were ''employed by the employer on November 8, 2010,'' as previous § 1926.1427(a)(4) stated.[19] This revision is in line with, and will be enforced similarly to, other OSHA provisions that require employers to provide personal protective equipment, medical examinations, or other functions at no cost to the employees. The requirement would also be consistent with the way in which OSHA assessed costs in the 2010 economic analysis. In the final economic analysis of subpart CC, OSHA modeled all of the costs for compliance with the previous certification requirements as if all employers always paid for the certifications/licenses they provide for operators. Note, however, that this provision does not mandate an employer to maintain its employment of an employee/operator who cannot pass certification testing or who is not a good operator candidate. Furthermore, an employee who does not possess a certification may still be allowed by the employer to operate a crane, but only as an operator-in-training and through the employer's compliance with all requirements of paragraph (b) of this section.

Paragraph (c)(4) retains, without change, the content of previous § 1926.1427(g), which states that a testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable accrediting agency (in the option selected) for an organization providing both services are met.

[19] As in previous § 1926.1427(a)(4), revised paragraph (c)(3) does not require employers to cover the costs to employees of licensing that does not conform to the requirements of § 1926.1427.

*Paragraph (d)—Certification by an Accredited Crane Operator Testing Organization.*

As noted above, paragraph (c)(2) provides two options for certification: Compliance with paragraph (d) (third-party certification) or paragraph (e) (audited employer program). Compliance with the requirements of paragraph (d) is the option that OSHA expects the vast majority of employers to use. Paragraph (d) retains, with some non-substantive language clarification and two exceptions discussed below, the requirements of previous paragraph § 1926.1427(b) and is unchanged from the proposal.

First, the most significant change is that paragraph (d)(1)(ii)(B) replaces the references to certification by ''type and capacity'' that appeared in previous paragraph (b)(1)(ii)(B) with ''type, or type and capacity,'' as recommended by ACCSH (see OSHA–2015–0002–0037 pg. 71). OSHA has therefore also reworded previous paragraph § 1926.1427(b)(1)(ii)(B) to remove the requirement that an operator's certificate list a lifting capacity for which the operator was certified. The need for these changes is explained in the ''Need for a Rule'' section of this preamble. These revisions remove the requirement to obtain a certification for a designated crane capacity, but also clarify in the regulatory text that OSHA considers testing organizations whose programs provide certifications that specify ''type and capacity'' equally acceptable.

The ''type, or type and capacity'' language was requested by Crane Institute Certification and recommended by ACCSH. Several other commenters also made this request (OSHA–2015–0002–0036). The language has been included in the final rule to make clear that while all certifying bodies must certify by type of crane for their certifications to meet OSHA's requirements, testing organizations may also choose to specify for their certifications different levels of rated lifting capacity of cranes.

As explained in the section *Elimination of the Requirement to Certify Based on Capacity of Crane* of this final rule, almost all the comments received relating to the proposed removal of the requirement to certify by capacity were in favor of its removal. The commenters were split, however, on whether OSHA should keep the ''type, or type and capacity'' language in the regulatory text. One of those commenters specifically requested OSHA to keep the proposed language because many of its members ''currently require certification by type and capacity, and have expressed that they find both types of certification to be beneficial to establishing a baseline operator competency,'' and added that this language ''will help alleviate confusion about the changes to the requirement and allow employers to maintain their current certification requirements as they see fit'' (ID–1735). The one commenter who opposed OSHA's decision to remove the requirement for certification by capacity concluded that if OSHA did remove that requirement, then ACCSH's recommended language of ''type, or type and capacity'' should stay in the rule (ID–1235).

The agency also received comments requesting that OSHA not include the language ''or type and capacity'' in the standard. Two of these comments were submitted by certification bodies that currently provide certification by type only. Both believe removing this language will add clarity and reduce confusions among the regulated community (ID–1755 and 1816). One of them is concerned that keeping the language will inaccurately convey that ''the only options for certification are either (a) by type, or (b) by type and capacity,'' whereas ''testing organizations may in fact seek to consider factors other than 'type' '' or capacity when developing operator certification programs (ID–1755). A different commenter believes removing the reference to capacity ''does not restrict crane certifying bodies from certifying according to capacity should they so choose'' (ID–1611). Another commenter suggested OSHA revise the proposed language to require certification ''by type and/or type and capacity'' (ID–1828).

OSHA has decided to retain the proposed ''type, or type and capacity'' language for paragraph (d)(1)(ii)(B) because it makes it clear that the agency will accept certifications that are otherwise compliant with the standard from any of the four accredited certification bodies of which OSHA is aware. OSHA does not believe that including this language will lead to confusion in the industry because, currently, certifications are offered by type or type and capacity. None of the comments recommending the removal of certification expressed any confusion about including this language.[20]

Second, the revision does not include the reference in previous § 1926.1427(b)(2) to an employee being ''deemed qualified'' to operate equipment under certain conditions if no accredited testing organization offers certification examinations for a specific type of equipment. A credentialing organization suggested that OSHA ''remove misconceptions regarding what it means to be 'certified' '' by replacing ''deemed certified'' with ''deemed to have complied with the certification requirements of this section'' because it is ''more precise while remaining entirely consistent with the language currently proposed by OSHA'' (ID–1668). OSHA agrees with the commenter and is revising the regulatory text to adopt their suggested language. This change is intended to avoid the misconception that an operator could be considered competent to safely operate equipment without also being evaluated and determined competent by the operator's employer.[21]

All other provisions in paragraph (d) are unchanged from previous paragraph (b), and discussion and justification of these provisions can be found in the preamble to the 2010 final cranes rule (75 FR 48017).

A labor union commented that paragraph (d)(2) should be revised to establish a benchmark for the types of cranes for which a separate certification is required. They argue that without a benchmark, OSHA will be ''effectively delegating to an accredited testing organizations responsibility for determining the number of types of cranes for which a separate certification is required . . . .'' This concerns the organization because ''for-profit testing organizations, which benefit financially from an increased number of mandatory certifications, have an incentive to develop testing for additional types of crane, regardless of whether extra testing will improve safety'' (ID–1719). They propose that operators of

[20] The requested revision that the language read ''by type and/or type and capacity'' creates confusion because it could be read as requiring an employer to have either a certification by ''type'' or ''type and capacity'' or to have two certifications—one by ''type'' and another by ''type and capacity.'' OSHA's revised language makes clear that, for a certification to be compliant with OSHA standards, the certification must, at the very least, include the type of crane on which the operator was certified. Furthermore, retaining this language is responsive to the recommendation from ACCSH.

[21] OSHA had included the ''deemed qualified'' language simply as a means of clarifying that an operator would be considered qualified to operate a crane of the same capacity or less than the one on which the operator was tested. The use of ''qualified'' instead of ''certified'' at that time was meant to reflect the varying paths to compliance with the standard: Certification through a third party or employer-audited program, or other qualification through a state or licensing program or meeting the requirements specified by the U.S. military. In this final rule, OSHA has clarified the language by replacing ''deemed qualified'' with ''deemed to have complied with the certification requirements of this section.''

equipment for which there is no certification must still be certified on the equipment most similar to the equipment they will operate, but only if a national consensus standard does not recommend a separate certification for the equipment. In explaining their reliance on national consensus standards for making this determination, they point to the National Commission for the Certification of Crane Operator's (NCCCO) Crane Type Advisory Group, a group that has yet to publish a standard but is considering ''the skill sets required to operate various types of cranes for which separate certifications are not offered and a comparison of those skill sets to determine if they are already encompassed in existing testing (ID–1719).

OSHA explained its rationale in the preamble of the 2010 cranes rule for including similar language in previous § 1926.1427(b)(2). When OSHA was informed that there were not certification tests for a number of cranes, it decided to add ''flexibility in the certification requirement to deal with specialized types of cranes or newly developed equipment for which certification examinations might not be available.'' (75 FR 48018). To do this, OSHA applied C–DAC's proposed requirement for dedicated pile drivers—that operators be certified on the equipment most similar to the equipment they operated if there was no available certification test for the equipment they operated. OSHA has not adopted the recommendation of the labor union (ID–1719) because the agency does not believe it is in the best position to determine the various types of cranes for which certifications should be necessary. It would be unwise for OSHA to consider a major change to the standard before the NCCCO Crane Type Advisory Group concludes its work, which could include a consensus standard that identifies crane types that require a similar skillset and knowledge to operate.

OSHA requested comment on whether it should delete the requirement for operator recertification every five years, which was proposed as § 1926.1427(d)(4). OSHA mostly received comments in support of retaining the recertification requirement. One certification organization was not convinced that retraining and re-evaluation are sufficient substitutes for recertification. The commenter contrasted the retraining and re-evaluation requirements with recertification, asserting that:

> Recertification procedures of an accredited certification program are, by their nature, subject to standardized psychometric rigor and impartiality. By incorporating the rigorous test development and administration standards required by accrediting bodies, recertification requirements provide substantial benefits that are likely to enhance public confidence and improve safety at the worksite.

(ID–1755). Similarly, a different commenter warned:

> Remanding the recertification process to the discretion of employers will result in inconsistencies in how operators are assessed on their continuing knowledge and skills as well as an increased risk of endangering the public. As operators move between employers, there will be confusion in the marketplace about skill levels, the potential need for costly retraining, and increased safety concerns.

(ID–1668). A consultant added that ''[r]ecertifying by 3rd party is completely unbiased,'' and focuses on new information that may not be conveyed during an evaluation (ID–1764). Another commenter expressed concern about relying on retraining in lieu of recertification, arguing that ''a training program does not indicate skill mastery or competency as measured against a defensible set of standards set through an industry-wide process'' (ID–1150).

Many commenters agreed that recertification was necessary to continue establishing a baseline knowledge of crane operation (ID–1150, 1719, 1744, 1755, 1768, 1816, 1828). For example, one commenter stated certification is an ongoing process and recertification is necessary for an operator to maintain the knowledge and skills necessary for safe crane operation because ''unused skills atrophy and there are ever-evolving technological changes in newly-manufactured cranes and periodic regulatory changes'' (ID–1719). To this point, a certification body submitted comments that at least 3,755 certified operators have failed their recertification exams, operators that ''[i]f OSHA were to delete the requirement for operator recertification every five years . . . would be legally able to continue operating cranes—even though an independent, third-party assessment would have determined them to lack the baseline competence to do so'' (ID–1755).

Additionally, many of the comments supportive of keeping the recertification requirement pointed out accreditation organizations ANSI and NCCA require recertification as part of an accredited certification program (ID–1150, 1668, 1719, 1744, 1755, 1794, 1816, 1828). An affiliate of one of these organizations commented that ISO 17024, a consensus standard ''recognized by several federal agencies as a requirement for credentialing organizations that offer certification,'' requires recertification (ID–1150). Another comment noted that many states and localities also require recertification of crane operators (ID–1719).

Some supporters of the recertification requirement recommended that OSHA also require a set number of hours an operator must spend gaining experience with the crane prior to recertifying. One of these commenters explained that each certification body requires an operator to document 1,000 hours of ''crane-related experience'' in the five years prior to recertification and, accordingly, recommended that OSHA require operators attempting to recertify to meet this standard (ID–1816). During its 2010 rulemaking, OSHA considered and rejected a nearly identical request for seat-hour-requirements (75 FR 48019).

The record amply demonstrates the sufficiency of the accreditation process that must be passed for a testing organization to become accredited. That process is designed to ensure that accredited testing organizations use a sufficiently reliable process for certifying operators. The record also shows that such a mechanism is an effective one for determining operator competence . . . . There is insufficient information in the record to include an additional requirement for 1,000 hours of ''crane related experience . . . .'' The commenter does not specify what should be included in ''crane related experience,'' or why 1,000 hours would be the appropriate amount of such experience for this purpose.'' (75 FR 48019). The commenter has not presented any new evidence to persuade OSHA to change its position. If all accrediting bodies did require the certification bodies they accredit to include a minimum amount of time for ''crane related experience,'' then the commenter would not need to ask OSHA to mandate that requirement. Even after nearly a decade following OSHA's consideration of that point in the 2010 rulemaking, the prominent accrediting bodies that accredit the four major crane certification organizations have not imposed this approach. OSHA continues to rely on the accreditation process to determine whether, based on analytics and careful scientific study of the issue, recertification requires a prescribed number of hours gaining experience with the equipment. If the accrediting bodies determine it is necessary, then they will presumably require the certification organizations to

include it as part of their testing criteria. The agency believes there is insufficient evidence in the record to support such a new requirement, especially one that may be very onerous on crane operators who may not have the opportunity to gain 1,000 hours experience with the equipment.

Another commenter recommended language that would allow a minimum number of hours of crane experience to *substitute* for the practical recertification test, also citing the 1,000 hours of ''industry experience'' as a threshold accredited testing organizations accept in place of retaking the practical test (ID–1719). The commenter also cites state laws that require recertification, but those requirements vary vastly. For example, while California requires operators to recertify every five years and have 1,000 hours operating experience on the crane for which recertification is sought, Washington only requires that a certification be renewed to ensure operators maintain qualified operator status (ID–1719). Similarly, a different commenter opposed a recertification requirement because ''if an operator has been operating safely for five years, there is no need to recertify'' (ID–1615). The commenter continued, stating ''most employers provide their operators with updates on new equipment and changes to government regulations'' (ID–1615).

OSHA is not persuaded that merely gaining ''industry experience'' for a certain number of hours, without any true measure of the safety of operation during that period, or operating ''safely'' for five years, should replace a third-party validation of the operator's knowledge, skills, and abilities. Besides the vagaries of ''crane experience'' and ''industry experience'' already noted in response to the prior commenter, as well as the subjective nature of ''operating safely,'' OSHA notes the previously discussed comments from the certification organization about the importance of staying abreast of ''ever-evolving technological changes in newly-manufactured cranes and periodic regulatory changes,'' as well as the 3,755 certified operators who failed their recertification exams but would otherwise have been legally able to continue operating cranes (ID–1755). Even if ''most'' employers do actually provide their operators with updates on equipment and changes in regulations, it is not clear that the operators comprehend those changes, and it does not take into account the operators who are not fortunate enough to work for employers that provide these updates. The fact that an operator has logged 1,000 hours or five years in the cab of a crane, even without injury, does not mean that the operator is aware of technological and regulatory changes that have occurred during that period, that the operator has operated without near misses or other issues, or that the next hazard the operator faces will not result in injury.

Another commenter urged removal of the recertification requirement, stating that recertification is unnecessary because it is duplicative of the refresher training provided to crane operators at regular intervals in their industry (ID–1631). As OSHA explained in the 2010 rulemaking, ''the rulemaking record shows that a training requirement alone is insufficient to ensure that crane operators have the requisite level of competence,'' and cannot substitute for third-party validation of the operator's comprehension of that training (75 FR 48013).

OSHA agrees with the comments submitted in support of retaining the recertification requirement. As the agency has previously concluded, certification is a necessary component for safe crane operation. Recertification establishes a standardized, baseline knowledge of equipment operation for operators and indicates to an employer that a certified operator has at least a certain knowledge of how to operate a crane. Recertification helps to ensure that an operator does not lose this baseline knowledge over time. It also helps to ensure continuing education for certified operators so they are aware of any regulatory changes that impact their work. The agency believes there are some employers that would find it difficult to make sure their operators are up to date on changes to equipment and updates to regulations that affect their operation unless they had the ability to have their operators recertified. Therefore, OSHA is retaining the requirement for recertification as proposed.

*Paragraph (e) Audited Employer Program*

The substantive content of paragraph (e) is the same as previous § 1926.1427(c), and it is promulgated as proposed. It sets out the parameters for a nonportable certification program administered by the employer and audited by a third party. The changes to the regulatory text for the audited employer program are the removal of the word ''qualification'' and the replacement of three cross references with updated references to their new locations in the revised standard.

OSHA has removed reference to ''qualification'' from the heading of the paragraph. It has been removed to avoid the misconception by some that the term signaled full competency, rather than its intended meaning as an equivalent to certification. The employer-audited program will continue to be an alternative to certification by an independent third party.

Three cross references have also been changed. First, the reference in previous § 1926.1427(c)(1)(i) to ''paragraph (b)'' was revised to ''paragraph (d)'' in the updated rule. Second, the reference in previous § 1926.1427(c)(1)(ii)(A) to ''paragraph (b)'' was revised to ''paragraph (d).'' Finally, the reference in previous § 1926.1427(c)(4) to ''paragraphs (c)(1) and (2)'' was revised to ''paragraphs (e)(1) and (2).'' OSHA did not receive any comments to the proposed changes to this paragraph.[22]

Finally, in § 1926.1427(e)(5), OSHA explains what an employer must do in the event an auditor discovers a significant deficiency in an employer's operator qualification program. OSHA considers a significant deficiency anything that would result in an employer-audited program being noncompliant. For example, failure to meet requirements listed in § 1926.1427(e)(1)–(4) would result in a

[22] OSHA received one comment asking the agency to make the audited employer program ''more feasible,'' by ''expand[ing] its definition of 'auditor' so that more accredited auditing organizations are available as resources to meet the requirements of this option,'' even asking OSHA to designate staff to audit employer programs (ID–1647). The commenter asserted that OSHA's standard requires an audited employer program to use tests developed by an accredited crane operator testing organization and to obtain approval from an auditor certified by an accredited crane operator testing organization to evaluate these tests. The commenter stated that this creates ''a conflict of interest for the crane operator testing organization to the detriment of the audited employer program option. As long as all auditing must go through one of these three organizations, there is little incentive for them to approve or audit an employer program since such auditing would remove certification candidates from their own programs'' (ID–1647).

In the NPRM, OSHA explained that it was proposing only minimal changes to the audited-employer program provisions—the removal of ''qualification'' and the updating of cross-references—and requested commented on the ''proposed variations from the existing § 1926.1427(c).'' The comment discussed above is not responsive to that request because its suggestion is outside the scope of the proposed variations from existing § 1926.1427(c). Furthermore, OSHA proposed and finalized this requirement in the 2010 cranes standard based largely on C–DAC's recommendation ''that independent, third-party involvement was needed to ensure the reliability and integrity of any testing program.'' (75 FR 48020). Relying on the written and practical tests developed by an accredited crane operating testing organization or an auditor's approval that these tests meet industry recognized criteria ensures that operators certified under this section have the baseline knowledge of safe crane operation.

significant deficiency that would trigger the requirements in § 1926.1427(e)(5).

*Paragraph (f) Evaluation*

Paragraph (f) sets out specific requirements that employers must follow to conduct an operator evaluation, including evaluation criteria, minimum qualifications for the person conducting the evaluation, documentation, and re-evaluation requirements.

The rationale for the evaluation requirement is explained earlier in the ''Need for a Rule'' section of this preamble; the discussion here focuses on OSHA's rationale for when and how the evaluations will be conducted. OSHA's goal in paragraph (f) is to give employers flexibility to conduct evaluations in the course of normal business, but at the same time to provide enough specificity to ensure that an evaluation satisfies the minimum criteria necessary for the safe operation of cranes by operators.

Paragraph (f)(1) requires employers to evaluate their operators and specifies the two goals of the evaluation: Ensure that the operator has (1) the ability to safely perform the assigned work, and (2) the necessary skills, knowledge, and ability to recognize and avert risks in order to safely operate the actual equipment that will be used. These performance-based evaluations are intended to be more directly focused on the operator's ability to perform assigned work than the general knowledge and skills tested during the certification process. In paragraph (f)(1)(i), OSHA provides a list of performance-based criteria to ensure that the evaluation encompasses various aspects of the equipment, such as safety devices, operational aids, software, and the size and configuration of the equipment. Paragraph (f)(1)(ii) focuses on the importance of the operator's ability to perform specific tasks, such as blind lifts, personnel hoisting, and multi-crane lifts.

In developing the performance-based evaluation criteria, OSHA considered the training requirements in the powered industrial truck operator training standard at subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations, § 1926.602(d), which incorporates the requirements of § 1910.178(l). That standard requires the employer to evaluate a powered industrial truck operator's performance as it relates to several topics at least once every three years. Powered industrial trucks share many of the same operating hazards as cranes, such as those related to ground conditions, load limits, and hazards in the area surrounding the equipment. But powered industrial trucks are generally far less complex, smaller, and less hazardous pieces of equipment in terms of the extent to which they expose other employees to their risks.

Almost all employers who spoke with OSHA said that, when they observe operators handling loads at construction worksites, they can tell whether the operators appear competent (Reports #1, 2, 3, 6, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 22, 23, 26, 27, 28 of ID–0673). These employers are accustomed to assessing operator skills because having competent operators that can safely and productively handle loads quickly, smoothly, and without corrections, eliminates injuries and reduces costs.

A number of commenters provided suggestions about the language of the evaluation requirement in § 1926.1427(f). Commenters expressed support for providing flexibility for employers, as opposed to trying to specify a definitive list of evaluation criteria in the regulatory text. As OSHA explained in the NPRM, it would be very difficult, if not impossible, to specify in regulatory text a definitive list of minimum equipment characteristics that an operator competency evaluation must cover to ensure operators are competent to safely operate equipment in all of its possible configurations. However, there was significant disagreement among commenters about the extent of the flexibility and guidance that OSHA should provide.

Three industry associations supported the language proposed by OSHA. One of these commenters found the proposed language ''sufficiently flexible'' because it contains phrases such as ''includes but is not limited to'' and ''including, if applicable'' (ID–1611). A different commenter praised OSHA's proposed text and urged the agency to ''maintain this flexibility in the final rule so that employers have the ability to continue their existing programs or craft new programs that meet the needs of their company's workplace'' (ID–1735). Another of those commenters appreciated the fact that the language is ''general and not exhaustive'' because ''[a]ny attempt to develop an exhaustive list of factors runs the risk of including factors that are not relevant, leaving out factors that are important, and 'freezing' the list in time requiring a rulemaking process to update the list as technology develops and industry practice changes . . . the employer should have the discretion to develop its own list of factors affecting an operator's ability to safely operate equipment'' (ID–1779).

AGC of Texas (ID–1615), expressed concern that OSHA's proposed language would require too many evaluations:

> As written this requirement is infeasible. Cranes have multiple configurations (counterweight, attachments, boom configurations etc.) as well as capacities based on these and the radius of any given lift. It is not possible to evaluate an operator on each potential configuration that could be encountered throughout the day. Set up/configuration will vary dependent on the work involved and will be job specific so this will vary from job to job. Rarely if ever would the required components for every possible configuration of any given crane be available on a job . . . . The (f) Evaluation section of the rule as written makes it nearly impossible for an employer to evaluate operators on each machine and it's [sic] many different capacities and configurations prior to any given lift in a timely and efficient manner.

OSHA understands the concern about an excessive number of evaluations, but the agency disagrees that its revised standard would require the frequency of evaluation suggested by the commenter. For example, the standard does not require operators to be evaluated on ''every possible configuration of any given crane.'' Later in this preamble section OSHA provides additional guidance about when evaluations are required, and when they are not.

Associated General Contractors (AGC, ID 1801) expressed its preference for retaining the existing language in § 1926.1427(k). The Specialized Carriers & Rigging Association (SC&RA) agreed, asserting that ''[t]here is no supporting evidence indicating employers are not fulfilling their obligations to train and evaluate their operators for the cranes to which they are assigned. As such, there is no need for further clarification, requirements or language'' (ID–1828). SC&RA went on to advocate for slightly different language (see the discussion of the ACCSH proposal in the next paragraphs).

As OSHA explained in the NPRM, the agency does not agree that the employer duty under prior § 1926.1427(k) provided sufficient direction to employers. That language was intended originally only as a temporary measure to preserve the pre-2010 status quo pending the application of the certification requirement and was drawn from the language in § 1926.20(b)(4) (''The employer shall permit only those employees qualified by training or experience to operate equipment and machinery''). Part of the genesis for the 2010 final rule was that OSHA had concerns about relying primarily on the general guidance in § 1926.20(b)(4) rather than more clearly defined measures specific to crane operators, noting that C–DAC had

implicitly deemed it insufficient for operator safety by recommending a new standard.

The Coalition for Crane Operator Safety (ID–1744), a group of national labor, construction management, equipment manufacturers and distributors, insurance underwriters and accredited certification organizations, and two of its members writing separately (Specialized Carriers & Rigging Association, ID 1828 and William Smith, ID 1623), as well as the North America's Building Trades Union (ID–1768), advocated for OSHA to adopt ACCSH-recommended language. ACCSH recommended that OSHA replace the entire evaluation requirement with an employer duty to ''ensure that operators of equipment covered by this standard meet the definition of a qualified person in § 1926.1401 to operate the equipment safely.'' These commenters did not respond, however, to OSHA's explanation in the NPRM (83 FR 23556) that this approach would fail to accomplish the purpose of additional evaluation beyond certification. Relying on the definition of a ''qualified person,'' which can be met in some cases solely through ''possession of a . . . certificate,'' would return the standard to the inadequate ''certification only'' approach that prompted the same commenters to urge OSHA to propose the permanent employer evaluation duty in the first place (ID–0670). Under this approach, an operator would become both certified and a ''qualified person'' through the completion of a certification test. Nor did the commenters respond to OSHA's explanation that the ACCSH language fails to provide employers with ''sufficient specifics to ensure operator competence,'' including the ''specific step[s]'' that an employer must take to ''qualify'' operators.

Mr. Smith also expressed concern that the evaluation OSHA proposed ''is flawed because there are no standards for the industry to follow in the evaluation therefore each evaluator will do it differently. The results will be ambiguous at best because there is no baseline to consider for qualifications'' (ID–1623). OSHA recognizes that employer evaluations may not be uniform. That is the tradeoff for allowing the flexibility that OSHA has allowed employers in the standard. However, OSHA expects that the criteria it has included in the regulatory text, as well as the examples it provides in this preamble, will provide meaningful markers for effective evaluations to ensure safety. OSHA also notes that this commenter's concern about insufficient specification of criteria in the regulatory text supports, rather than contradicts, OSHA's decision not to adopt the more simplified regulatory text proposed by ACCSH that he recommends.

AGC (ID–1801) offered alternative regulatory text that modified and combined paragraphs (f)(1)(i) and (ii) into a single paragraph (f)(1) stating, ''Through an evaluation, the employer must ensure that each operator demonstrates the skills, knowledge, and ability necessary to operate the equipment safely for the assigned work or task.''

While OSHA views this approach as more workable than relying on the definition of a ''qualified person'' because it retains the goals of the evaluation, the agency is concerned that this alternative still lacks the level of specificity necessary to provide effective guidance to employers.

One local chapter of a member of the Crane Safety Coalition, the International Union of Operating Engineers (IUOE Local 49) (ID–1719), provided a separate comment that included a different alternative that OSHA believes would be a better bridge between the ACCSH proposal and OSHA's proposed text. In its comment, IUOE acknowledged OSHA's prior rationale for rejecting the ''qualified person'' approach and responded with a combination of the ACCSH recommendation and OSHA's proposed text:

> • Evaluation. Through an evaluation, the employer must ensure that each operator is qualified by a demonstration of: * * * [The skills, knowledge, and the ability to recognize and avert risk necessary to operate the equipment safely, including . . . . The ability to perform the hoisting activities required for assigned work, including . . . .]

This alternative is similar to the ACCSH recommendation because it still contains the requirement that the operator be qualified, but avoids OSHA's concern about relying on the term ''qualified person'' with a requirement to ensure that ''each operator is qualified by a demonstration of . . . .'' OSHA is adopting this compromise language in the final rule because it incorporates part of the language recommended by ACCSH while still preserving the criteria that provides guidance to employers. OSHA notes that while ''qualified'' is not defined in the cranes standard, there is a definition of that term in § 1926.32 that applies generally to construction and that definition also equates the possession of a certificate with being ''qualified.'' OSHA is therefore adding a new paragraph § 1926.1427(f)(3) to clarify that the definition of ''qualified'' in § 1926.32 does not apply to § 1926.1427(f). Unlike the ACCSH recommendation that relied on the definition of ''qualified person'' in § 1401 for its substance, the use of ''qualified by a demonstration of'' does not necessitate a separate definition of ''qualified'' because the remainder of paragraph (f)(1) provides a functional definition.

IUOE's alternative also eliminates the requirement to evaluate the operator's ''judgment'' and as a result helps to address the following objection raised by AGC concerning the term (ID–1801):

> First, the term is not used in any other OSHA standard or requirement that we are aware of. * * * Second, an operator's proper judgement is almost impossible to discern during the evaluation process and there are a variety of factors that could impair an individual's judgement which are unrelated to their assigned work and operational ability. Lastly, this could be a catch-all in the event of an incident as an operator's judgement could always be cited as a factor.

The American Public Power Association shared similar concerns:

> As a practical matter, employers will be evaluating operator judgement when the evaluation is taking place. However, we are concerned that the term ''judgment'' if contained in the Final Rule will lead to unintended consequences, especially in an enforcement context.

(ID–1779). The Associated General Contractors of Texas (AGC of Texas), commenting separately, suggested that OSHA replace judgment with ''competence,'' which would include the ''authorization to take prompt corrective measures'' (ID–1615).

In the earlier quotation of the IUOE text, ''judgment'' was replaced with ''ability to recognize and avert risk.'' OSHA has adopted this change in the final rule. This approach focuses on one part of the definition of judgment previously identified by OSHA. In the NPRM, OSHA explained that ''judgment'' referred to not only an operator's ability to apply the knowledge and skill that he or she possess, but also ''an operator's ability to recognize risky or unusual conditions that call for additional action such as re-evaluating a lift plan, stopping work, or asking for the help of another competent and/or qualified person'' (83 FR 23550). OSHA had also explained that the term ''judgment'' connotes the ''successfully demonstrated ability'' of a ''qualified person,'' as defined by OSHA's standards in § 1926.1401, ''to solve/resolve problems relating to the subject matter, the work, or the project'' and the capability of a ''competent person'' to identify ''previous and predictable hazards'' (Id.). OSHA is implementing this language instead of referring to a

''competent person'' because that term is used elsewhere in the standard and for this purpose OSHA prefers the emphasis on the ability of an operator to identify and avert risk rather than focusing on his or her authority.

Adopting IUOE's more focused version of this component of the evaluation also addresses AGC's point that employers may have difficulty examining an operator's judgment on a wide variety of subjects during the evaluation process. During an evaluation, the operator must demonstrate his or her ability to recognize and avert risks.

For example when operating a floating crane, an experienced operator should recognize that a change in tidal ranges could affect the boom angles at which work must be performed, potentially affecting the safety of hoisting operations during particular times of day. Another example is when an operator appropriately recognizes that a different crane will be needed because the ground conditions at a particular jobsite prevent him or her from setting up the current crane at the only locations where picks with that crane would be safe. A knowledgeable operator would also know that even though the current crane can boom out sufficiently from an alternate set-up position, the weight of the loads will easily exceed that permitted by the load chart at that boom length and radius. Another crane will be needed for that job if the alternate set-up area must be used. Another example of an operator's ability to recognize and avert risk would be when an operator knows to consider the wind speed and direction when determining where on the jobsite air turbulence is likely and may torque broad loads, making them more unstable. An experienced operator can also demonstrate the ability to recognize and avert risk by engaging site authorities, such as the project manager, site supervisor, or project engineer, during the planning of the project's progression. It is then that the operator can recommend plans for utilizing the crane more efficiently and making safer picks, such as those that are in plain view, not adjacent to power lines, and not over people or other structures.

One commenter requested that OSHA replace the employer's duty to ''ensure'' that the operator possesses the requisite skills, knowledge, and ability to recognize and avert risk with a simpler duty ''to take reasonable measures to evaluate operators' ability to operate equipment in a safe manner'' (ID–1779). OSHA is not adopting this change for two reasons. First, OSHA views this reduced duty as an unnecessary and significant departure from OSHA's common practice of requiring employers ''to ensure'' compliance with performance standards. OSHA notes, for example, that 29 CFR 1926.1400(f) includes a similar mandate in the scope of the cranes standard, requiring employers to establish, communicate, and enforce work rules ''to ensure compliance with such provisions.'' Similarly in § 1926.1402(c)(1), OSHA requires controlling entities to ''ensure that ground preparations necessary to meet the requirements'' of the standard are met. For crane assembly and disassembly near power lines, OSHA provides one compliance option in which employers must ''ensure'' that no part of the equipment, load line or load gets closer than 20 feet to a power line (§ 1926.1407(a)(2)).

Second, OSHA is concerned that the suggested language would be so vague as to potentially render the entire duty ineffective and unenforceable. Employers might, for example, perceive a requirement to ''take reasonable measures to evaluate'' operators as requiring no more than appointing an evaluator. Because OSHA has framed the evaluation requirement as a flexible performance measure as requested by stakeholders and commenters, it is particularly important that the employer have a duty to satisfy the performance requirement, not just take steps towards doing so.

For the reasons identified in the previous discussion, the revised rule retains the performance-based character of the previous evaluation requirements in § 1926.1427(k)(2)(i), but makes clear that the operator must possess the necessary skills and knowledge to operate ''the equipment'' safely, as well as the ability to recognize and avert risk in order to operate the equipment safely. Those skills, knowledge, and abilities must be relevant to the actual equipment that will be operated. While the specifications and characteristics of equipment and operations can be learned in a classroom setting, the application of equipment operation and hoisting techniques can only be fully learned from hands-on experience at worksites. For example, the operator must not only know what each control does and where it is located, but also be able to demonstrate how and when to use particular controls or operational aids.

Much of the subject matter on which the operators must be evaluated is specified in the testing criteria listed in paragraph (j), but it is critical to ensuring safety that the employer evaluation is equipment- and task-specific. For example, an experienced and certified operator may have previously demonstrated the ability to lift a crate of materials onto a roof using one crane. However, if the company gets a new crane that has different controls, the employer would need to evaluate the operator's knowledge and skill at using the new controls in the new crane (note that the employer would not need to re-evaluate the operator's general knowledge about crane operations). The employer's evaluation could focus exclusively on the operator's familiarity with the controls in their different locations. As another example, if an inexperienced operator has already been evaluated for operation of a new model of crane, but has only used that equipment to hoist packaged materials, the employer would likely need to evaluate the operator's ability to control a wrecking ball attachment before allowing that operator to use the wrecking ball in a demolition project (note that the employer would not need to re-evaluate that operator's knowledge of the controls or general operation of the crane).

A commenter from the insurance industry expressed concern about the impact of the rule on employers that work in the Petro Chemical and Refinery industries who use Union halls to ''ramp up when 30 to 75 crane operators are needed for a shut/down turnaround on a 30 day period.'' These employers would, the commenter asserted, ''have to evaluate and set up every crane to be used in the refinery and evaluate each newly hired operator prior to the job and before letting them work in the plant'' (ID–1623). OSHA disagrees. An operator could be evaluated on a single crane and then allowed to operate other equipment that do not require substantially different skills, knowledge, or abilities to identify and avert risk. OSHA also notes that the American Fuel & Petrochemical Manufacturers, which describes itself as ''a national trade association comprising virtually all U.S. refining and petrochemical manufacturing capacity,'' also submitted comments on the rule but did not raise similar concerns about the evaluation requirements (ID–1628). Neither comment explained how the use of cranes at refineries and petrochemical plants would constitute construction work.

Stakeholders who spoke with OSHA said that most employers are already able to determine the subject matter and crane knowledge that their operators need to safely perform hoisting activities with their cranes (Reports #2, 3, 4, 9, 11, 15, 18, 21, 26, 28 of ID–0673). However, not all employers do so. OSHA's requirements should encourage

consistency throughout the industry in confirming the basic knowledge, operating skills, and abilities of all operators in construction work, as well as ensure that all operator evaluations cover subject matter that is specific to the equipment used and the construction activities performed.

Paragraph (f)(1)(i) also specifies that the operator's knowledge, skills, and ability to identify and avert risk must be ''specific to the safety devices, operational aids, software, and the size and configuration of the equipment.'' This list of equipment characteristics, which stakeholders identified as critical for safe operation (Reports #1, 4, 5, 6, 10, 11, 18, 19, 20, 21, and 25 of ID–0673), is not comprehensive, but provides employers with some basic characteristics of equipment that might require different levels of knowledge and operating skills. For example, the employer must verify that the operator knows enough about how the safety devices, operational aides, and software work on a particular crane. The operator must be able to apply that knowledge to recognize when the particular characteristics of the equipment may contribute to potentially unsafe conditions or operations and to determine how to proceed safely. Such a determination might include using particular operating skills to safely land or maintain a suspended load if an operational aid malfunctions during use, or simply refusing to hoist the load until a safety issue is addressed.

OSHA is including equipment software in this list because many stakeholders noted that operators must have the skills to use a computerized operating system if the crane has one (Reports #2, 4, 18, 21 of ID–0673) and that specific operating systems (Reports #4, 9, 13, 18, 19, 21, 22, 24 of ID–0673) or cranes by different manufacturers (Reports #4, 6, 13, 16, 18, 21, 24 of ID–0673) can require different skills or knowledge. Indeed, newer cranes often have integrated computer systems to protect workers and the crane. Operators must understand how these systems prevent damage to the crane that could impair safe operation of the crane, especially if the crane can be operated with the system turned off. That is not the only issue with newer cranes that may require evaluation. One construction company that also provides crane operator training noted that the materials used to make some new cranes can be more ''brittle,'' meaning that they have reduced safety factors and allow for less room for error (Report #21 of ID–0673). Exceeding these operating tolerances can lead to structural equipment failure such as a crane collapse or tipover, so evaluating operators is critical to ensure that they understand how to avoid exceeding specified tolerances.

OSHA is including boom length in the list of characteristics because longer booms may require specialized depth perception skills or may be harder to control (Reports #2, 3, 22 of ID–0673). OSHA notes that at least one certification testing organization uses different boom lengths as a proxy for changing the capacity of the crane because the boom length can have a significant impact on the performance of the crane (see OSHA–2007–0066–0521, p. 268–69).

The stakeholders OSHA interviewed also identified crane configurations (Reports #4, 6, 11, 18, 19, 20, 21, 22, 25 of ID–0673); the use of attachments (Reports #6, 18, 19, 20 of ID–0673); and the use specific safety devices and operational aids such as those listed in § 1926.1416 *Operational aids* (Report #21 of ID–0673) as important crane characteristics that can require unique skills, knowledge, or the ability to recognize and avert risks.

In proposed paragraph § 1926.1427(f)(1)(i) (83 FR 23568), OSHA specified that the ''size and configuration'' of cranes, including lifting capacity, as well as boom length, attachments, use of a luffing jib, and counterweight set up, are important considerations in the safe operation of cranes. AGC of Texas specifically objected to the inclusion of ''lifting capacity'' in the listed evaluation criteria, noting that the capacity of a crane changes nearly every time an operator makes a lift because there are so many factors that affect the determination of what the capacity of the crane will include: The configurations of the crane (counterweight, attachments, boom configurations, etc.), radius, boom length, and boom angle. AGC of Texas wrote:

> It is not possible to evaluate an operator on each potential configuration that could be encountered throughout the day. Set up/configuration will vary dependent on the work involved and will be job specific so this will vary from job to job. Rarely if ever would the required components for every possible configuration of any given crane be available on a job. E.G >500-ton lattice boom crane that has a max boom length of 200′ may be configured for 100 feet of boom and enough counterweight to have 375 tons of capacity as that is all that is required for the scope or scopes of work involved. The components (boom and additional counterweight etc.) necessary to configure the crane for a 500-ton capacity and 200 feet of boom would not be available * * * Capacity is a function of many factors and not actual operation of the crane. Its effect on safe operation is taken into account with proper lift planning.

(ID–1615). That commenter suggested that if removal of ''lifting capacity'' was not possible, then OSHA should substitute: ''The ability to determine capacity based on the configuration of the crane, the load, and deductions as required by the manufacturer.'' William Smith appeared to disagree, stating: ''The capacity issue is mute [sic] since there is no requirement for a load to be placed on the crane'' (ID–1623).

OSHA has retained the language that lifting capacity is a component of ''size and configuration'' to be assessed during an evaluation. In response to removing the capacity from the certification requirement, some stakeholders explained that capacity as it relates to crane operation is better assessed by the employer (Report #20 of ID–0673, ID–1735, 1755). The revised rule does not require employers to evaluate their operators in every possible configuration of equipment or combination of configuration and boom length, etc., that would factor into a crane's capacity. Additional evaluations are only required when the operator's existing skills, knowledge, or ability to identify and avert risk are not sufficient for that operator to operate the equipment in a new model, configuration, etc.

OSHA requested comment on items listed in paragraph (f)(1)(i). Besides the objection to the inclusion of ''lifting capacity,'' one commenter suggested a different approach:

> A performance-based assessment of an operator's ability to inspect (operational not detailed mechanical) and set up the crane for operation (to include the LMI); to utilize the manuals/load charts for determining capacities and to operate/handle a load, as well as a ''seat test'' to determine safe operating capabilities is all that is needed to evaluate an operator.

(ID–1615). While OSHA had previously rejected requests that the agency include minimum seat hours in the standard, OSHA expects that some ''seat test'' time is implicit in the items already listed in paragraph (f)(1). Similarly, the ability to utilize the manual and load chart is required for certification, and the use of a particular manual or chart is inherent in possessing the skills and knowledge to operate a particular piece of equipment safely. As discussed in the NPRM, OSHA is not including specific references to assembly and disassembly or inspections because those are already addressed in other sections of subpart CC. Operators may not be assigned to perform these activities unless they are trained to safely perform activities in

accordance with the applicable sections of subpart CC.

The lists in paragraphs (f)(1)(i) and (ii) are not exhaustive, so in addition to the items listed there, employers must consider still other differences that may be important to the safe operation of the equipment. For example, an operator who previously demonstrated competence in operating a small crane to hoist materials to and off of buildings being demolished does not necessarily have the knowledge and operating skills needed to safely swing a wrecking ball to demolish the same building. The physics of swinging a wrecking ball into a building, which can lead to equipment failure due to side loading or shock loading the boom, are different from smoothly controlling a load, which does not present these hazards. Similarly, an operator who has operated a crane in support of pile driving work, using pile driving attachments, does not necessarily have the skills necessary to smoothly control and place steel members suspended by multi-lift rigging or to safely control a suspended personnel platform.

Paragraph (f)(1)(ii) requires the employer to evaluate the operator's ability to perform hoisting activities required for assigned work, including, if applicable, special skills needed for activities like blind lifts, personnel hoisting, or lifts involving more than one crane. This list of activities is not exclusive, but rather provides examples of lifts for which an employer must evaluate the operator's ability. The words ''if applicable'' are used to indicate that employers must evaluate operators only for the types of lifts they will perform and not all possible variants of hoisting procedures.

As noted earlier, OSHA considered the training requirements of the powered industrial truck standard (§ 1910.178(l)) as a model when developing the evaluation requirements in the proposed standard. The powered industrial truck standard requires that employers evaluate an operator's ability to perform job-specific tasks that include ''workplace-related topics,'' and refresher training when there are changes in a workplace condition that could affect safe operation of the truck (§ 1910.178(l)). Paragraph (f)(1)(ii) similarly requires the evaluation of an operator to cover the workplace aspects of the operator's job, including the specific hoisting activities that he or she will perform.

Stakeholders who spoke with OSHA asserted that the performance of different types of work sometimes requires different skill sets. Many employers currently evaluate their operators based not only on their knowledge and skills regarding specific characteristics of the equipment, but also on their operators' ability to perform specific tasks with the equipment (Reports #1, 2, 3, 4, 6, 9, 10, 13, 15, 16, 18, 19, 20, 21, 22, 23, 26 of ID–0673). Several of those stakeholders noted specific examples of operational challenges that may require additional operator skills to ensure safe operations. One crane rental company stated that if an operator who spends a year on a large project with repetitive work is then moved to a different job that involves different lifts and set-ups every day, that individual may not be competent to do some of that kind of work (Report #6 of ID–0673). A residential construction employer stated that residential jobs can be especially challenging to crane operators because lifts may have to be performed on previously disturbed soil, which can cause the cranes to lose stability and may necessitate special preparations and operations under some worksite conditions. However, this employer also said that residential construction crane operators might not gain necessary experience performing blind lifts or lifting heavy/unstable loads that may be typical to operating a crane on commercial projects (Report #16 of ID–0673). A larger construction employer stated that it includes job-specific components in its evaluation of operators to ensure that operators have the ability to work on/around underground utilities and power lines (Report #18 of ID–0673). Finally, a crane operator training company noted that operators may require significant practice to develop the ability to control a dragline or perform operations with a clamshell or bucket attachment (Report #20 of ID–0673).

OSHA requested comment on all aspects of proposed paragraph (f)(1)(ii). One commenter requested clarification on the requirement to evaluate the ''ability to perform hoisting activities required for assigned work:''

> The terms task-specific and assigned tasks, in our opinion, can potentially be interpreted to mean jobsite-specific training. If this is the intent, compliance with this proposed provision would be very onerous as operators may encounter jobsite conditions that are similar but not identical to the conditions for which they have been previously trained. In addition to the jobsite conditions being different, the loads which may be required to be hoisted may also be different. For example, a tower crane operator on a building project may lift materials and loads ranging from bundles of steel to bundles of plywood. * * * operators can be required to hoist a variety of materials and perform various lifts for the project such as hoisting concrete buckets or formwork, conducting blind picks, or picks below grade.

(ID–1801). As discussed earlier, the standard does not require separate evaluations for every conceivable difference in equipment or task. OSHA's intent is that the employer identify the substantive differences that require *new* skills, knowledge, or abilities that the operator has not already demonstrated during a previous evaluation. The standard does not require a new evaluation of the same tasks at a different jobsite unless the new jobsite requires the operator to have new skills, knowledge, or abilities. Absent special circumstances (very long pieces that would change the dynamics of a lift, significantly different bundling methods, etc.), OSHA expects that a certified tower crane operator who has been evaluated lifting a bundle of steel would also be qualified to lift a bundle of plywood. The employer would not need to re-evaluate the operator because lifting a bundle of lumber does not require any significant new skill, knowledge, or ability that the operator had not already demonstrated by lifting a bundle of steel.

OSHA did not receive any other comments specifically addressing paragraph (f)(1)(ii) (other than the requests for broad revisions of (f)(1) discussed earlier) and is promulgating that paragraph as proposed.

OSHA is adding a new paragraph (f)(2), which was not in the proposal, in response to several commenters raising concerns about the process of evaluating experienced operators during the transition period as the new evaluation and documentation requirements in the final rule take effect. Several commenters (ID–1623 and ID–1828) suggested ''grandfathering'' (exempting) currently certified operators from the evaluation requirements. One of these commenters explained:

> The challenge for the industry is that operators working for the same or several employers that have 15, 20, 25, even 30 years in the business and every crane that they have operated has not been documented. This is the impracticable and infeasible part of the rule where a Grandfather Clause may be required for all currently certified operators and any new operator entering the industry after the date of enforcement goes through a documentation process to move forward and make sense of the rule.

(ID–1828). While the comment focuses on the documentation aspect of the new rule (see later discussion of § 1926.1427(f)(6)), the comment also raises the question whether employers will need to re-evaluate every operator. Under the new language in § 1926.1427(f)(2), the answer is ''no.''

For operators already employed by an employer, paragraph (f)(2) allows that employer to rely on its ''previous assessments of the operator in lieu of conducting a new evaluation'' of that operator. OSHA's final rule does not require employers to make each existing operator re-sit for formal re-evaluations on all applicable equipment and perform different tasks when the employer has already previously assessed that operator prior to the effective date of the rule and determined that he or she is qualified to safely operate such equipment for certain tasks.

Several terms may require additional explanation. For the purposes of § 1926.1427(f)(2), an ''operator'' encompasses anyone who has been operating equipment covered by this subpart, including operators in training, such that the employer has had an opportunity to assess the operator's performance on the relevant equipment and tasks and has determined the operator can safely perform on those equipment and tasks. The reference to ''its previous assessments'' is intended to ensure that the operator was previously assessed, even if that assessment was not previously documented in accordance with new § 1926.1427(f)(6), and that the operator's employer (or its agent) conducted the assessment. The employer cannot rely on recommendations or evaluations from a previous employer. It is important that the employer have its own factual basis for its determination that the operator has the skills, knowledge, and ability to identify and avert risk necessary to operate particular equipment safely for particular tasks. But that factual basis does not require a previous formal evaluation by the employer's current evaluator. For example, the current evaluator might not have observed an operator's previous 25 years of work. In such a case, the employer would satisfy the requirements of paragraph (f)(2) if it noted that the operator had operated specified equipment safely for that employer. OSHA has provided a corresponding exception in the documentation requirements of § 1926.1427(f)(6), which is discussed later in this preamble.

OSHA prefers this approach to any ''grandfather'' approach that would completely exempt existing operators from all evaluation. Such an exemption would not accomplish the purpose of providing a baseline of operator qualification against which an employer could compare future equipment and assignments to determine if they require new skills, knowledge, or the ability to identify and avert risks. Furthermore, completely exempting existing operators from all evaluation would not achieve a primary objective of the rulemaking: With respect to future assignments, there would be no employer duty to ensure that these operators have the skills, knowledge, and ability to safely operate assigned equipment for assigned tasks in a variety of contexts. Such an exemption would be a step backwards from the prior temporary employer duty in § 1926.1427(k), which did not provide any exemption for previously employed operators.

Paragraph (f)(4) establishes minimum criteria for the person who performs the required evaluation of an operator-in-training. The evaluation must be conducted by an individual who possesses the knowledge, training, and experience necessary to assess operators. This standard affords some flexibility to employers as they seek to ensure operator safety. An evaluator could be, for example, a current or former operator who is also trained to assess equipment operators. The key, however, much like the criteria for the person performing training and evaluation of operators under the powered industrial truck operator training standard (§ 1910.178(1)(2)(iii)), is that the evaluator possess the requisite knowledge, training, and experience for assessing an operator's knowledge, skill, and ability to recognize and avert risk. Such knowledge, training, and experience is not necessarily the same as the knowledge, training, and experience to perform the particular construction operations or processes oneself.

Stakeholders spoke with OSHA at site visits and meetings about how they comply with the employer duty described in § 1926.1427(k)(2)(i) in the prior standard. Several of those companies specifically employ individuals to assess operators (Reports #18, 22 of ID–0673). A large construction company with a very robust and formal evaluation process has ''Authorized Examiners'' who perform evaluations of operator applicants for the company. These are personnel with significant experience and training, including completion of crane operator certification and rigger courses (Report #18 of ID–0673). In many other cases, the evaluations are performed by other personnel such as experienced riggers, maintenance personnel, signal personnel, or tradesmen who have demonstrated the necessary experience or training to conduct this assessment (Reports #1, 2, 3, 6, 15, 16, 20, 23 of ID–0673). Day-to-day assessment of an operator's performance may be conducted by a qualified person who is often a manager or foreman at the job site. (Reports #1, 3, 6, 18 of ID–0673). A seasoned operator who has been designated by the employer to mentor an operator-in-training may also make determinations about when an operator-in-training is ready to perform certain tasks, and may weigh in on the evaluation or confirm that an individual is ready to operate without monitoring (see, *e.g.,* Report #2 of ID–0673).

Stakeholders who spoke with OSHA offered competing recommendations about whether OSHA should require that evaluators be certified as operators. Several employers who spoke with OSHA stated that an individual may have the ability to evaluate an operator without being a certified operator (Reports #1, 6, 18, 20, 26 of ID–0673). They indicated that evaluators may be safety managers or other senior employees with significant experience working around cranes, but who might not currently be certified (see, *e.g.,* Reports #1, 6, 18, 26 of ID–0673). Others may be specifically trained to evaluate operators. But at the May 2015 ACCSH meeting, several representatives from the crane industry asserted that evaluators should be certified (OSHA–2015–0002–0036).

Based on information obtained from the stakeholders, OSHA opted in the proposal to maintain employer flexibility in choosing who may perform the required evaluation as long as those evaluators have, or develop, the requisite assessment knowledge and experience. OSHA noted that the national consensus standard for cranes (ASME B30.5–2014 Mobile and Locomotive Cranes, Chapter 5–3) does not require or recommend that evaluators of operators must be certified by third-party testing entities; a ''designated'' person who qualifies operators must be a qualified person by experience and training but need not be certified (B30.5, section 5–3.1.2(e)). Similarly, previous § 1926.1427(f)(3)(ii) required that the trainer of an operator-in-training must have passed at least the written part of a certification test, but did not require that the trainer must be an operator or certified. Additionally, employers who spoke with OSHA and publicly commented at the March 2015 ACCSH meeting expressed the view that passing the written portion of a certification test alone does not mean an individual has the ability to effectively evaluate the competency of an operator (OSHA–2015–0002–0036). But along with other crane-related experiences, OSHA believes that, if a person has passed the written portion of the

certification test, it should be taken into account when deciding if that person has the knowledge and abilities necessary to evaluate crane operators.

OSHA requested public comments on the proposed criteria, including whether OSHA should require that the evaluator be an operator, have been an operator, or at least have passed the written portion of certification testing. There was disagreement among the commenters on this issue. An insurance company representative expressed the view that evaluators must be both former operators and a trainer in accordance with § 1926.1427(b) (ID–1623). NCCCO proposed certification for operators, or alternatively that evaluators should be required at least to have passed the written part of a certification test and have familiarity with the equipment's controls, consistent with the requirements previously required for trainers under the prior standard (ID–1755). Certification, that commenter explained, ''should be regarded as an appropriately necessary condition of establishing such competence and ensuring a 'baseline' of knowledge and skills:''

> Requiring that an evaluator have a baseline of knowledge and skills as an operator is likely, not only to improve the quality of evaluations, but also to increase safety during any evaluation in the event the operator-in-training engages in an unsafe act and the evaluator must intervene. Since November 10, 2010, when the crane Rule became effective, no fewer than 685 candidates have been prohibited from continuing with their practical exams after engaging in unsafe acts as recorded by NCCCO Practical Examiners during practical exams. Had the Examiners not also been certified operators, with the training and experience to recognize hazardous and potentially dangerous crane operations, these unsafe acts that might have been allowed to continue, with consequent property damage, personal injury, or worse.

(Id.).

Two other commenters disagreed. One commenter urged OSHA to ''grant employer flexibility in choosing who may perform the required evaluation'' and to ''leave the decision as to who may evaluate, and the qualifications of the evaluator, to the employer'' because the employer is in a better position to ensure that an operator is competent to complete an assignment safely (ID–1779). Another commenter agreed that the evaluator need not be certified, nor a former operator: ''With a clearly defined evaluation process, an individual who is qualified, or competent in crane safety and operation would be able to assess an operator'' (ID–1615).

OSHA is not requiring that evaluators must be certified or have previous experience as an operator. While experience as an operator and certification might be helpful, C–DAC did not recommend either for trainers and OSHA is not requiring it in the final rule because it does not think it is necessary to hold evaluators to a higher standard than C–DAC recommended for trainers. As stated in the NPRM, OSHA heard from stakeholders who have successfully involved a variety of personnel in the evaluation of operators, including riggers, maintenance personnel, signal personnel, tradesmen, managers, and foremen who have demonstrated the necessary experience to conduct this assessment. These personnel are typically not certified to operate cranes (See Reports #1, 2, 3, 6, 15, 16, 18, 20, 23 of ID–0673). Based on the record, OSHA does not wish to prevent these kinds of personnel from performing effective evaluations.

OSHA acknowledges the certification organization's concern about safety during the evaluation (ID–1755), but the agency believes the standard already addresses that concern. An operator-in-training must remain under the supervision of a person who meets the definition of a ''trainer,'' which includes ''the knowledge, training, and experience necessary *to direct* the operator-in-training on the equipment in use'' (§ 1926.1427(b)(4)(i)(B) (emphasis added)). Because the operator-in-training cannot move out of that status until the completion of an evaluation, a trainer is required at the evaluation if the evaluator does not also meet the definition of a trainer (see later discussion about trainer also serving as evaluator).

As OSHA explained in the NPRM, paragraph (f)(4) will allow employers the flexibility to contract with a third-party agent to conduct evaluations if the employer does not maintain the expertise on staff, or to identify existing staff who may not have operator experience but are capable of conducting an evaluation. OSHA wants to allow employers to continue using effective and safe solutions that they have already identified and are currently in use. For example, OSHA spoke with an employer that took steps to qualify its first operator without having an experienced mentor-operator on staff. This was accomplished by enrolling the operator-in-training in several outside classes, including a crane manufacturer's training and training with the local union, and then arranging for an experienced union operator to mentor the operator-in-training. Later, when the employer hired additional operators-in-training, the first operator, now experienced, was able to serve as the trainer and evaluator (Report #16 of ID–0673).

A sole proprietor OSHA spoke with followed a similar path when he first started operating cranes for a former employer by seeking out the mentorship of an experienced operator before beginning to operate independently. When the company later hired other operators, this individual trained new operators and supervised them for at least a month before evaluating them (Report #23 of ID–0673).

One commenter suggested that OSHA clarify that it is the employer of the operator who ultimately bears the responsibility for ensuring that the operator is evaluated. The commenter stated ''if a crane operator has been made available through a third party and the third party also owns the crane, then [the operator] effectively works for the third party and thus, the third party should be responsible for the evaluation'' (ID–1615). A different commenter requested that OSHA add language to paragraph (f)(5) to clarify that an ''employer may not relinquish its duties under these paragraphs [by] delegating them to a third-party:''

> The evaluator must be an employee or agent of the employer. Employers that assign evaluations to an agent retain the duty to ensure that the requirements in paragraph (f) are satisfied.

(ID–1719). While this addition is arguably unnecessary because § 1926.1427(f)(1) includes the introductory text ''the employer must ensure,'' OSHA is adding the commenter's suggested text for clarification and consistency with the requirements for a trainer in § 1926.1427(b)(4)(i)(A). OSHA requires operator trainers to be an ''employee or agent of the operator-in-training's employer'' (Id.).

Several commenters requested additional guidance regarding evaluators. One commenter asked for clarification about whether a trainer can also serve as the evaluator, expressing support for the idea because the ''process of properly training an operator-in-training should not be drastically different from successfully evaluating that same operator'' (ID–1801). Another commenter expressed support for trainers to also potentially serve as evaluators, stating that ''the employer should use its best judgment in identifying the suitable criteria for evaluator qualifications for the particular task, jobsite, and equipment at use for that employer'' (ID–1779). A different commenter opposed allowing a single person to serve in both roles, noting that national accrediting

standards bar the same person from performing both a training role and an evaluation role out of concern that an evaluator may not effectively evaluate of an operator the evaluator had trained:

> NCCCO proposes that trainers should be precluded from acting as evaluators within the framework of the Rule. Alternatively, NCCCO proposes that trainers should be precluded from acting as evaluators with respect to any operator whom the evaluator has previously trained. NCCCO submits that individuals responsible for training operators are less likely to be in a position effectively to evaluate operators for whom they provide training services. The evaluation contemplated by the proposed Rule should provide an independent assessment of the ''skills, knowledge, and judgment'' necessary to operate the equipment safely. If the training and evaluation functions are combined and not separated, and if the evaluator is called upon to exercise substantial judgment in evaluating the subject or potential subject of training, then the validity of the evaluation tool is likely to be compromised because an evaluator may lack the requisite objectivity when conducting assessments of operators who are former or potential trainees. * * * By separating the training and evaluation functions, the proposed Rule is more likely to result in outcomes that ensure the quality of evaluations and improve worksite safety.

(ID–1755).

OSHA understands the arguments against allowing trainers to act as evaluators for operators that they trained, but declines to prohibit this practice. It has not traditionally prohibited this type of practice, where employers conduct trainings for employees and also ensure that they comprehend that training. In this context, moreover, the certification and evaluation requirements are intended to work in tandem, and the certification requirement ensures that the operator has demonstrated basic skills, knowledge, and abilities through an objective, third-party examination process. OSHA also seeks to maintain a flexible standard that will allow employers to continue current practices where possible and minimize any additional cost or burden, such as hiring additional staff, on employers and small firms. If OSHA prohibited trainers from also serving as evaluators, employers would be bound to a process in which a formal evaluation would take place only after the completion of training. While that model is acceptable under the standard, OSHA also intends to allow employers to maintain more flexible models in which operators may be allowed to try new equipment, configurations, or tasks under the guidance of a trainer as the opportunities present themselves at the worksite. If the trainer also meets the requirements of an evaluator, that person would be able to determine when the trainee has demonstrated sufficient skill, knowledge, and ability for particular equipment or tasks. The trainer/evaluator could evaluate and document the trainee's success and move on to other areas of training. This model may be particularly useful in scenarios where an operator is expected to operate many different pieces of equipment for many different tasks, using different configurations or attachments, when there are significant differences that would require additional skills, knowledge, or ability. A trainer also serving as an evaluator would be able to evaluate the operator as the operator gains experience with those different tasks, configurations, and equipment differences; it could save significant time and effort that would otherwise be required to replicate all of those scenarios later in front of a different evaluator. Finally, by allowing a trainer to also evaluate the operator in actual work settings engaged in tasks that the operator will be expected to perform, the evaluations might actually provide a more realistic gauge of the operator's skills, knowledge, and ability than in a more sterile evaluation setting. For all of those reasons, OSHA is not prohibiting an operator's trainer from also serving as that operator's evaluator.

One commenter asked how a small contractor could comply with the evaluation requirement when ''hiring a crane'' for a single lift, implying that the contractor does not have someone on staff who would qualify as an evaluator (ID–1476). There are at least two methods of compliance in that scenario. First, that contractor could select a firm that offers the crane along with a qualified operator who has been certified and evaluated by that firm. In that scenario the crane firm would be operator's employer and have the responsibility to ensure that the operator is certified and evaluated. Second, the contractor could hire a certified operator and contract with an outside party to evaluate the operator.[23]

A ''bare rental'' company that rents cranes without an operator asked for clarification about its duties under OSHA's standard:

> Who will be responsible for signing off on the operator's document of evaluation? As the owner of the crane that we rent it to a company, we do not know who they will select to operate the crane, and from a legal stand point we do not want to sign off on somebody we do not know.

(ID–1495). In that scenario, the crane rental company is not the employer of the operator and will not be on site or otherwise be controlling the operator. OSHA's standard does not require that crane rental company to ensure that the operator of its crane is certified or evaluated. That would be the responsibility of the employer of the operator.

Paragraph (f)(5) permits the employer to allow an operator to operate equipment other than the specific equipment on which the operator was evaluated, as long as the employer can demonstrate that the new equipment does not require substantially different skills, knowledge, or abilities to operate. An additional evaluation would be required before an operator would be allowed to operate equipment that requires substantially different skills, knowledge, or abilities to operate.

OSHA believes this approach addresses the concerns of some stakeholders about unnecessary competency evaluations while ensuring appropriate evaluations of operators. Many stakeholders warned that unnecessary competency evaluations could be very time consuming and burdensome without providing any real safety benefit. Many employers who spoke with OSHA during meetings and site visits explained, for example, that they assign operators to run the same crane every day, or to operate a crane from a specific group of the company's cranes that are all very similar (Reports #1, 2, 3, 6, 13, 16, 19 of ID–0673). Others said that they permit their operators to run similar cranes interchangeably (see Report #15 of ID–0673). But other stakeholders indicated that they already follow practices that may exceed what OSHA is requiring. One large construction company, for example, requires its operators to go through a formal evaluation for any different equipment that the operators are assigned to run, even if the operators have already demonstrated competency, through an evaluation, to operate other similar equipment (Report #11 of ID–0673). Another large national construction firm provides supplemental testing for different crane configurations (Report #18 of ID–0673). And one stakeholder at the March 2015 ACCSH meeting explained that it requires a ''seat check,'' an evaluation that may take a day or two, ''every time that operator goes to a new machine . . . [w]e want to do the walk around

[23] The same commenter (ID–1476) asked about the role of Construction Manager in this requirement under multi-employer projects. OSHA notes that the commenter did not include enough information to allow for a response because, for example, the construction manager might or might not be an employee of the operator's employer and may or may not have the required qualifications to serve as an evaluator.

inspection. We want to test him on what he's absorbed when we walked around . . . includ[ing] safety checks, prestart and post-start'' (see OSHA–2015–0002–0036, pg. 232–239).

As previously explained, OSHA does not intend to require the additional evaluation of operators when it is not necessary, such as when there are minor differences between equipment models of the same type that do not necessitate substantially different skills, knowledge, or abilities to operate the crane safely. As discussed earlier in reference to the general requirements in § 1926.1427(f)(1), OSHA's evaluation requirements will provide employers some flexibility when determining whether an additional evaluation is required.

This flexibility is necessarily cabined, however, by the employer's duty to ensure that its operator's skills, knowledge, and ability to recognize and avert risk are sufficient for safe operation at the jobsite. Some employers explained to OSHA that they often need operators to operate very different sizes and configurations of the type of equipment (or equipment of a different type) on which they evaluated the operator, to perform various tasks (see Reports #2, 4, 6, and 22 of ID–0673). Even an experienced operator, when assigned to operate a different crane, may need time operating the equipment under supervision to become familiar with how to safely operate it. One owner/operator stated that when he used different cranes in the past, even if they were all boom trucks built by the same manufacturer, he needed a substantial amount of time to familiarize himself with the significant differences between the cranes before he had the skills, knowledge, and ability to recognize and avoid risks necessary to safely operate them (Report #23 of ID–0673). OSHA concludes that it is reasonable that the employer may need to conduct an additional evaluation of the operator before determining that the operator is competent to safely run a different piece of equipment alone (Reports #3, 6, 16, 22 of ID–0673).

One commenter (ID–1615) requested clarification of the meaning of ''that the employer can demonstrate'' in § 1926.1427(f)(5), which relieves the employer of the need for additional evaluation for other equipment that the ''employer can demonstrate does not require substantially different skills, knowledge, or ability to recognize and avert risk to operate.'' Specifically, the commenter asked whether an additional evaluation would be necessary for operation of two specific crane models: A 50-ton rough terrain hydraulic crane and a 60-ton rough terrain hydraulic crane, which the commenter stated are ''identical in operation, but different in capacity.''

In requiring that employers demonstrate that the different equipment does not require substantially different skills, knowledge, or ability to identify and avert risk, OSHA intends that the employer will be able to justify the basis for its determination. An example of this justification could include an employer consulting an operator who has experience safely operating both pieces of equipment and could provide feedback about the differences in operation, or the employer could cite discussions with equipment manufacturers about the differences between models as justification for the basis of its determination. In response to the commenter, it is not likely that this change in capacity would require the employer to conduct an additional evaluation as long as the cranes are operated in similar configurations and other aspects of the crane (such as the computer operating systems, spatial arrangement of controls, control functions, safety devices, operational aides, mode of travel, and function of the equipment) are similar. However, changes in the configuration such as the use of different attachments (*e.g.,* wrecking ball versus a clamshell), significant changes in boom length, or the addition of counterweights are a few examples of differences that may require an additional evaluation. Similarly, design differences like the location and function of the controls (*e.g.,* the boom hoist control is located where the line hoist control was located on the other equipment) may also require the operator to become familiarized with these changes and some other limited evaluation of the operator's grasp of these changes. An evaluator meeting the requirements of § 1926.1427(f)(5) must be able to make these determinations, but can consult other appropriate individuals like the crane manufacturer or additional operators experienced with the equipment. Ultimately, if the difference in the controls and functions of the equipment is significant enough that the operator's unfamiliarity with the equipment may create a hazardous condition, then the employer must conduct an additional evaluation.

One of the certification entities, NCCCO, requested that OSHA ''clarify the proposed § 1926.1427(f)(3) to indicate that the employer is only determining whether additional evaluation is necessary for different equipment, and that the employer's approval to operate ''other equipment'' may be given only if the operator is also certified or deemed to have complied with the certification requirements for type of the other equipment at issue'' (ID–1755). OSHA agrees that § 1926.1427(f)(5) has no impact on the requirements for operator certification. Regardless of the employer's determinations in the evaluations required under § 1926.1427(f), the employer must ensure that the operator is certified or working as an operator-in-training.

OSHA does not expect that the evaluation requirement will be overly burdensome for employers, particularly with the flexibility provided in paragraphs (f)(2) and (5). Although OSHA heard concerns from several commenters that OSHA would require that an operator be evaluated on every crane that their companies might use, or in every possible configuration, OSHA has explained that its revised rule does not require that. Furthermore, these commenters appear to have mistakenly assumed that OSHA would require each evaluation to be in the form of a time-consuming formal test rather than a much simpler observation of the operator performing construction operations using the crane. The required supplemental re-evaluation of a previously evaluated operator can focus on the operator's abilities to handle the differences between the new equipment and the one previously assigned; it would not require a complete evaluation of all of the operator's skills, knowledge, and abilities.

In general, the determination whether a new evaluation is needed turns on whether the safe operation of the new crane requires additional skills, knowledge, or ability to recognize and avert risk. For example, an employer may evaluate an operator and determine that he or she has demonstrated the ability to safely operate a large crane in a relatively complex configuration. If the employer determines that the operator has the skills, knowledge, and ability to identify and avert risk necessary to safely operate a smaller crane of the same type and operating system, in a simpler configuration with a shorter boom, then the operator would not need to be re-evaluated (assuming that the tasks are similar). Similarly, a new evaluation may not be necessary for an operator to operate a larger crane for the same task. Where the two cranes are configured similarly, and they have similar controls (including computer operating systems, spatial arrangement of controls, and control functions), safety devices, operational aides, mode of travel, and overall function, such that significant new skills, knowledge, and

ability to identify and avert risk are not necessary to operate the cane safely, then a new evaluation would not be required.

A commenter asked whether additional evaluations would be required if a crane and operator move to multiple locations (ID–1476). They would not, assuming that the operator remains employed by the same employer, the crane remains in the same configuration, and the operator would not be performing different tasks that require significantly different skills, knowledge, or ability to identify and avert risk. Evaluations are specific to the operators, equipment, and tasks, but are not dependent on location. However, if assigned work at multiple locations requires an operator to have substantially different skills, knowledge, or ability to recognize and avert risk, then an employer must perform an evaluation of the operator to ensure he or she can perform the assigned work.

Paragraph (f)(6) requires the employer to document the evaluation of each operator and to ensure that the documentation is available at the worksite. OSHA, by requiring this documentation to be available at the worksite in the NPRM, implied that the documentation must be maintained by the employer for the duration of the operator's employment. OSHA is adding language to this final rule that states explicitly the documentation must be maintained while the operator is employed by the employer. This language is similar to language in § 1926.1428(a)(3) requiring employers to maintain documentation of a signal person's evaluation while the signal person is employed by the employer.

This documentation requirement is also similar to documentation requirements in other OSHA standards that require competency evaluations, such as OSHA's powered industrial truck operator training requirements (§ 1910.178). The documentation under § 1926.1427(f)(6) must include: The operator's name, the evaluator's name, the date of the evaluation, and the make, model, and configuration of the equipment on which the operator was evaluated. But the documentation would not need to be in any particular format. Rather, employers would have the flexibility to capture this information using their own existing systems or create documentation that best meets the needs of their workplace. For example, employers could issue operator cards that include this information, keep records electronically in a database accessible at the worksite, develop logs for each piece of equipment, or use any other method that memorializes the mandatory information.

The documentation requirement will ensure accountability and direct the employer's attention to the critical aspects of operating the assigned equipment that must be considered during the evaluation. The documentation of the evaluation will record key baseline information that an employer can use to help make subsequent determinations about whether the operator is competent to operate particular equipment on future projects. It will also provide a quick reference for site supervisors, lift directors, and any employee, such as a hoist crew member, whose safety is affected by crane operations. This information can help prevent any misunderstandings about, or mischaracterization of, an individual operator's established competency as determined by the employer, as in the *Deep South* fatal incident. There, an operator was assigned to operate a crane of a type for which he was certified, but the controls and operations were substantially different from those with which he was familiar. Had the employer conducted an evaluation and documented it rather than relying only on information specified on the operator's certification, this incident could have been prevented.

The agency's discussions with stakeholders indicated that information about operators is typically collected but not necessarily for regulatory compliance purposes. Many employers who spoke with OSHA during meetings and site visits explained that they maintain for their own purposes a log or record to track operator experiences, certifications, and performance evaluations. For example, at least two employers reported that they issue cards to evaluated and competent operators with information about those operators' qualifications. (Reports #11, 18 of ID–0673). Others use written records to track operators' performance, training, or other criteria. (Reports #1, 2, 3, 4 of ID–0673). And employers who own cranes and have long-term operators must provide lengthy and detailed operator information to their insurance providers.

Many subcontractors, too, are becoming accustomed to maintaining a written record of their operators' experience and evaluations. Some employers explained that, on multi-employer construction sites, subcontractors are often asked by general contractors, insurers, or other employers on the site to provide documented information about their operators, such as certifications and verifications of training and ''qualification'' for the cranes operated. One crane rental company noted that it keeps records for each operator, and that this kind of information is often requested or required by customers. (Report #6 of ID–0673). Another company told OSHA that it frequently provides written information about its operators to contractors, even when not requested. (Report #26 of ID–0673). A contractor that sometimes works with subcontractors' operators noted that it maintains an in-house database of those operators, site supervisors, and directors that it has encountered on projects, with evaluations and notes about their performance. (Report #22 of ID–0673). Another company that employs operators as subcontractors keeps records of near misses involving its subcontractors, as well as documentation of operators that the company feels may not be qualified to operate equipment. (Report #14 of ID–0673). Finally, OSHA notes that it is a common practice within the construction industry for operators to carry certification cards provided by the testing entities as proof of certification. The documentation requirement of this paragraph will be even more useful in communicating operator competency for employers who must consider crane safety on multi-employer worksites.

As previously discussed, paragraph (f) permits the employer to evaluate the operator on one crane and then make a determination that the operator is also competent to safely run other equipment that requires the same level of operating skills, crane knowledge, and ability to recognize and avert risk. This provision allows employers to document these determinations collectively. For example, if an employer with five cranes, possibly configured in slightly different ways, determines that an operator's evaluation on Crane #2 also demonstrates the operator's competency with respect to the other four cranes, the employer could use a single document to record the operator's competence to operate all five cranes. In fact, the documentation for the original evaluation could simply be amended to state that it is also applicable to identified equipment that does not require substantially different skills, knowledge, or abilities. However, when the operation of a crane requires a level of operating skills, knowledge, or abilities that is significantly different from the crane on which the operator was evaluated, a new evaluation must be carried out and documented. Varying the facts in the earlier example, if two of that employer's cranes include

computer software to control safety devices and the three other cranes do not have such software but are otherwise similar, then an operator already evaluated on a crane without the software would need to be evaluated separately on the use of that software, with that evaluation also documented. However, the evaluation can be limited to only making determinations about the operator's ability to safely use the cranes that rely on computer systems.

Several commenters expressed concern that the documentation would take too much time and effort, particularly if employers are required to take time to separately evaluate and document each operator on each potential piece of equipment, safety device, operational aid, software, and the size and configuration of the equipment (see IDs 1611, 1615, 1623, 1801). One of these commenters asked OSHA not to require employers to document the make, model, and configuration of the equipment on which the operator was evaluated to ''further reinforce'' that operators are not required to be evaluated on every crane that their companies might use, or every possible configuration'' (ID–1801).

These concerns are misplaced because, as OSHA explained earlier, the rule does not include any requirement that an operator must sit in the cab of each crane the company owns to be evaluated and documented as competent to run every make, model, or configuration of the employer's equipment. Moreover, when evaluations are required, the process of recording the specific information about the crane(s) in which the operator was evaluated (including the make, model, and configuration of the equipment) helps to *avoid* additional evaluations. The required documentation provides the baseline against which the employer can determine whether particular equipment used on future projects can be safely operated by that operator because it would not require substantially new skills, knowledge, or abilities. The make and model of the equipment provides a fixed reference point for the configuration and system of controls that are in particular machines as well as particular designs of safety devices and operational aids, etc. This information can be used in comparisons with other equipment that the operator may be assigned to operate on future projects. If employers do not preserve this information, it makes it more difficult for them to determine whether an operator requires a new evaluation to operate other equipment.

Another commenter acknowledged some uncertainty about the impact of the documentation on its members and acknowledged documentation as ''good corporate practice'' followed by its members, but nevertheless asked OSHA to remove the documentation requirement:

> Our view is that record keeping for evaluations is a good organizational practice, but should be not be a driver in a safety standard as it may divert resources away from activities that improve safety. Documentation and record keeping should be reserved as good corporate practice and should not be a requirement of the rule. * * * If documentation and record keeping are to remain a part of this rule, OSHA should ensure than small businesses, as qualified by SBREFA, are exempt in order to reduce undue burden on business operations or detract from safe work practices.

(ID–1779). A different commenter stated that it would ''make sense for an employer to track evaluations on operators, so they would know what cranes an employee has been evaluated to operate and to provide protection from liability,'' but then claimed that OSHA's documentation requirement is ''purely punitive in nature'' and ''only benefits OSHA.'' That commenter, however, offered no alternative means of tracking other than documentation (ID–1615).

These comments support OSHA's observation in the NPRM that many responsible employers already have systems in place to evaluate their operators and document that process; OSHA disagrees that the documentation is merely a ''good corporate practice'' that diverts resources from safety or a ''punitive'' measure that provides no benefit to the employer. First, as discussed above, the documentation is a critical means of tracking an operator's baseline qualifications in order to avoid future evaluations. This documentation must be available at the worksite in the event there is some uncertainty about the operator's qualifications. OSHA notes that ''available at the worksite'' includes accessing this information at the worksite via a computer or other electronic means. Second, because not all employers follow this ''good corporate practice,'' the documentation requirement will help to ensure compliance with the standard. OSHA notes that ''available at the worksite'' includes accessing this information at the worksite via a computer or other electronic means.

Several commenters supported the documentation requirement. One commenter described OSHA's proposed documentation requirements as workable and providing sufficient flexibility to preserve existing employer practices:

> ABC appreciates that this proposal does not create a new system of documentation, and instead leaves employers the flexibility to capture this information in a way that makes sense for their workplace. * * * ABC members already have advanced operator competency programs in place, which include their own system of documentation, and therefore, any requirement from OSHA to document this information in a standardized form would be duplicative and unnecessary.

(ID–1735). The National Roofing Contractors Association expressed support for the proposed rule, which included the documentation requirement, as ''provid[ing] the necessary components to ensure the safety of NRCA members' workers and others while not altering significantly current compliance burdens members are obligated to meet'' (ID–1619). The American Fuel & Petrochemical Manufacturers too supported the rule, stating that OSHA's approach was ''aligned with'' their previous requests for documentation of the evaluations and making that documentation available at the worksite (ID–1628).

OSHA is retaining the documentation requirement for the reasons discussed above. The agency views the documentation as critical to identifying the baseline for future evaluations of operators, similar to how documentation of monthly or annual inspections required under § 1926.1412 is used by a competent person or qualified person during subsequent inspections as the basis for tracking potential issues with the equipment and making determinations about whether that equipment is suitable for planned tasks. OSHA has also concluded that the documentation requirement includes enough flexibility to address the concerns raised by commenters.

In addition, OSHA is modifying the text of paragraph (f)(6) to provide a corollary to the new provision in paragraph (f)(2)) that allows employers to provide initial documentation for operators that they are employing on the effective date of the rule, based on prior evaluations of those operators by the employers—another evaluation of those operators is not required for initial compliance with paragraph (f)(2). Because paragraph (f)(6) requires the documentation of the ''completion of the evaluation,'' thereby implying that some evaluation has occurred, OSHA is adding language to that paragraph to clarify how employers following the new alternative approach in (f)(2) may satisfy the documentation requirement. In such cases, employers need only ensure that the documentation reflects the date of the employer's determination

of the operator's ability to safely operate the ''make, model and configuration of equipment on which the operator has previously demonstrated competency.'' This documentation preserves the baseline measure for these operators against which their future crane operations can be measured. Again, the employer is only required to document the make, model, and configuration of the equipment on which the employer has previously assessed that operator. Employers are free to, but not required to, list all of the makes, models, and configurations of all of the equipment that the operator is permitted to operate. For example, the employer may document that the operator has previously demonstrated that he or she is qualified to operate Crane A, and then also record that, based on that qualification to operate Crane A, the operator is also qualified to perform the same tasks using the Cranes B, C, and D. In that example, the employer does not have to record the make and model of Cranes B, C, and D in order for the operator to operate them as long as it is clear which cranes are referenced.

Paragraph (f)(7) requires the employer to re-evaluate an operator whenever the employer is required to retrain the operator under § 1926.1427(b)(5). Section 1926.1427(b)(5) requires retraining if the operator's performance or an evaluation of the operator's knowledge indicate that retraining is necessary. OSHA intends this requirement to ensure that when an employer becomes aware that an operator is not competent in a necessary aspect of safe crane operation, the employer provides additional training to the operator and re-evaluates the operator. Re-evaluation is needed to ensure that the operator is competent in the area of the observed deficiency.

As discussed in the explanation for paragraph (b)(5), triggers for retraining under paragraph (b)(5) and re-evaluation under paragraph (f)(7) might include a wide variety of feedback, such as (but not limited to) information from an on-site supervisor or safety manager, contractor, or other person that the operator was operating equipment unsafely, OSHA citations, a crane near miss, or other incidents that indicate unsafe operation of the crane.[24] The re-evaluation must target the deficiency in skills, knowledge, or ability to recognize and avert risk that triggered the retraining, but need not include a re-evaluation of other previously evaluated skills, knowledge, or ability. Re-evaluations would need to be conducted by a person who meets the requirements of paragraph (f)(4).

OSHA does not view this re-evaluation as a significant departure from typical practices in the industry. As discussed previously, many stakeholders who spoke with OSHA at meetings and site visits emphasized that observation and re-evaluation take place on an ongoing, daily basis (see the *Background* and *Need for a rule* sections). For example, several stakeholders told OSHA that they would re-evaluate an operator if there was a crane near-miss or other incident indicating unsafe operation of the crane, or if they received negative feedback about that operator's performance from the controlling contractor or another party on a jobsite. (Reports #1, 2, 3, 18, 19, 22, 26 of ID–0673). Some employers conduct random worksite audits. (Reports #2, 3, 15, 18, 19 of ID–0673). One large construction company stated that it conducts over 100 safety audits of job sites each year to ensure operators are properly qualified. (Report #15 of ID–0673). Four companies that hire crane rental companies (crane rental with operators) noted that they raise any observed issues with the employer of the crane operator or the union from which the operator was selected. (Reports #12, 14, 15, 16 of ID–0673).

OSHA requested comment on the re-evaluation requirement, noting in the NPRM that the requirements for re-evaluation are also in line with the powered industrial truck operator training standard, in which OSHA requires re-evaluation if there is reason to believe that the operator is operating unsafely, if there is a near-miss or other incident, if the nature of the work to be performed changes, or if other factors indicate a deficiency (§ 1910.178(l)(4)) (see 83 FR 23554). One commenter generally agreed with this approach, but requested that OSHA not include a fixed time period for renewals such as the 3-year period required in the powered industrial truck standard. ''As a practical matter,'' the commenter stated, ''reevaluation of [powered industrial truck] operators employed in the construction industry occur far more frequently than triennially'' and ''contractors evaluate crane operators daily, mandatory reevaluations of crane operators at arbitrarily-selected intervals are unnecessary and will not advance crane safety'' (ID–1719). Another commenter suggested that re-evaluation of an operator should be required ''if there is a demonstrated need, or the technology or operations controls or expectations change'' (ID–1615). A different commenter, however, asserted that, in addition to requiring re-evaluations following observations of unsafe operation, OSHA should specify a fixed time period for re-evaluations ''at least on the same cycle as recertification (that is, at least every 5 years)'' because ''certification procedure does not ensure competency for the particular equipment the operator is assigned'' (ID–1768).

OSHA agrees with the commenters opposing fixed evaluations times that the record does not indicate a compelling need for re-evaluations at fixed intervals. While the one commenter requesting fixed re-evaluations is correct that the re-certifications required every five years do not serve the same function as re-evaluation on particular equipment, re-certification would at least ensure that the operator is familiar with significant changes in the industry. In general, operators should not require the same type of refresher for specific equipment that is not changing, particularly equipment that they are operating regularly. If there are significant changes to the equipment on which an operator was previously evaluated, such as the retrofitting of a new computer system or significant safety device onto that equipment, the employer would need to retrain the operator on that equipment and re-evaluate the operator's ability to operate the retrofitted equipment if an evaluation of the operator's knowledge indicates that retraining is necessary for the operator (this evaluation is required under paragraph (f)(1) because the employer must ensure that the operator demonstrates the skills and knowledge to operate the equipment safely, ''including those specific to the safety devices, operational aids, software'').

Thus, the regulatory text addresses the commenter's concern about changes in technology (ID–1615). Near misses and other unsafe operation are examples of when the ''performance of the operator . . . [provides] an indication that retraining is necessary'' under paragraph (b)(5). OSHA is not clear about the intent of the same commenter's suggestion of re-evaluation when ''expectations change'' (ID–1615), but regulatory text would require evaluations when there is a change in the tasks to which the operator is assigned that would require new knowledge, skill, or ability to identify and avert risk.

*Paragraph (g)—[Reserved]*

This paragraph is reserved because the text at previous § 1926.1427(g) was moved to revised paragraph § 1926.1427(c)(4). The provision was

[24] In proposed § 1926.1427(f)(5), OSHA inadvertently referred to compliance with retraining requirements under a non-existent paragraph (b)(6) instead of the correct reference to paragraph (b)(5). OSHA has corrected this error in the final rule.

moved to improve clarity of certification program requirements.

*Paragraph (h)—Language and Literacy Requirements*

Previous paragraph § 1926.1427(h) allowed operators to be certified in a language other than English, provided that the operator understands that language. Revised paragraph (h) is nearly identical to previous paragraph (h) with one exception. The last sentence of paragraph (h)(2) has been reworded to clarify that an operator is permitted to operate equipment only when he or she is furnished materials that are necessary for safe operation of the equipment and required by subpart CC, such as operations manuals and load charts, in the language of the operator's certification. The reference to previous paragraph (b)(2) was not maintained in proposed (h)(2) because it is no longer needed.

Paragraph (h) continues to allow ''tests'' in languages understood by the operator. In revised paragraph (h), ''tests'' encompasses both the certification test and the employer's evaluation of the operator. Either or both may be in any language understood by the operator. The language of the operator's manual or other furnished materials required by the standard would only need to match the language of the certification.

*Paragraph (i)—[Reserved]*

*Paragraph (j)—Certification Criteria*

Paragraph (j) specifies criteria that must be met by an accredited testing organization under revised paragraph (d) and an audited employer program under revised paragraph (e). The criteria specified by revised paragraph (j) of this section are the same as those specified under previous § 1926.1427(j). However, the introductory regulatory text in the previous version of § 1926.1427(j) states that ''qualification and certifications'' must be based, at a minimum, on several criteria for the written and practical tests found in § 1926.1427(j)(1) and (2). Revised paragraph (j) deletes the words ''qualification and'' because they are no longer necessary: Under the revised rule, a certification issued by an audited employer program is intended to be equivalent to that of an accredited testing program for purposes of complying with OSHA's rule. In the NPRM, OSHA neglected to replace the word ''qualification'' with ''certification'' in paragraph (e)(6)(i), so it is making that revision in this final rule. The other references to ''qualification'' have been removed from paragraph (e) in the final rule.

*Paragraph (k)—Effective Date*

Almost all of Subpart CC has already been in effect since 2010, the certification requirements were scheduled to go into effect on November 10, 2018 per OSHA's extension rule published last year (see 82 FR 51986 (November 9, 2017)). The effective date of this final rule applies to the certification requirements and all but one of the amendments. As explained below and as an exception, OSHA has decided to allow 90 days after the publication of the final rule for employers to conform their practices for evaluating their operators, including documenting the evaluations, to the requirements of OSHA's standard.

OSHA anticipates that most employers will require only minimal adjustment to their current practices, if any, such as documenting evaluations if they have not previously followed that practice. Employer assessment of operators has been a key part of the entire scheme of § 1926.1427 in effect through § 1926.1427(k) for eight years, so employers should already have a system in place that could be adapted as necessary to the new requirements.

Nevertheless, several commenters requested additional time to adjust to the new evaluation requirements. Three commenters requested that OSHA extend the November 10, 2018, deadline for one year (ID–1605, 1779, and 1801). One of these commenters stated that the extension was needed to provide ''an adequate amount of lead-time for instituting any new requirements for crane operator qualification'' and ''allow OSHA enough time and the opportunity to finalize the proposed rule'' (ID–1605). The second of these stated that the additional time would ''permit entities subject to certification requirements additional time to plan for and implement compliance'' and ''help alleviate any burden felt by small business affected by the rule'' (ID–1779). The third of this group of commenters suggested that the additional time was necessary to ''provide employers who have not currently certified their operators with sufficient time to do so,'' and encouraged OSHA to ''align the effective date for successful evaluations of new or existing operators with that of the requested operator certification extension,'' but did not provide any additional rationale for their recommendation (ID–1801).

Three commenters requested a six-month extension for OSHA to finalize the rulemaking and allow time for employers to adjust (IDs 1611, 1735, and 1826). Another requested an indefinite extension of the operator certification requirement while OSHA reconsidered exemptions from the standard (ID–1707).

OSHA agrees that some phase-in period is appropriate for the evaluation and documentation requirements, but disagrees that it is appropriate for the certification requirements. Employers have had ample notice since 2010 that certification requirements were going to go into effect.

A trade association for the lumber industry (ID–1821) requested a year to develop training and evaluation programs that would comply with § 1926.1427(b) and (f) because ''the training requirements in proposed § 1926.1427(b) significantly differ from the current training requirements, and . . . would impose new measureable standards that will take time to incorporate in current training and evaluation programs'' (footnotes omitted). OSHA does not recognize any substantive difference between the revised training requirements in § 1926.1427(b) and the previous requirements in § 1926.1427(f) except that the revised training requirements are clearer regarding the duty for continued training even after obtaining certification. The commenter's footnote 34, however, indicates that the commenter is comparing the revised training requirements to the phase-in operator competency requirements in § 1926.1427(k), which are separate and different from the main training requirements in prior §§ 1926.1427(f) and 1926.1430. Those operator training requirements have been in effect since 2010.

A labor organization (ID–1816) urged OSHA not to delay the effective date of the certification requirement or the amendments to the standard:

> Given the health of the construction economy there are, unfortunately, crane operators running types of equipment for which they are not fully qualified. In this way, the tight labor market places particular urgency on OSHA to implement the crane certification requirement thereby reducing the safety risks to workers as soon as possible. * * * we do not believe that a 6-month ''phase-in'' period is necessary given the certainty that now exists for workers, employers, and other stakeholders in crane-operator certification.

With respect to the evaluation requirements, there are more specific substantive differences between the revised standard and the previous standard, so it is understandable that employers may need some period of adjustment. The time periods suggested by the commenters appear excessive because the adjustment from the type of assessment required to comply with

prior § 1926.1427(k) compared to the revised provisions should not be that significant. OSHA believes that the 90-day extension strikes a more appropriate balance to address the urgency expressed by the labor organization and the need for some transition period as outlined by other commenters.

Section 1926.1430(c)—Conforming Changes to Operator Training

As noted earlier in this preamble, OSHA has amended only paragraph (c) of the training requirements in § 1926.1430 by replacing the substantive operator training requirements with a reference to § 1926.1427(a) and (b). The primary purpose of this revision is to centralize the training requirements that are specific to operators in revised paragraph § 1926.1427(b). However, OSHA has retained in § 1926.1430 the training requirements that are more broadly applicable. OSHA requested comments on the proposed change, but received none. The paragraph is therefore revised as proposed.

Paragraph § 1926.1430(c)(1) requires that the employer train operators of equipment covered by subpart CC in accordance with § 1926.1427(a) and (b), which contain all of the requirements for training under the final rule. Operators of equipment that remains exempted from the training requirements of § 1926.1427—derricks, sideboom cranes, and cranes with a rated hoisting/lifting capacity of 2000 pounds or less—are addressed by paragraph § 1926.1430(c)(2). Revised paragraph (c)(2), which is substantively the same as paragraph (c)(3) of the 2010 crane rule, provides a general requirement to train operators on the safe operation of the equipment. Paragraphs (c)(1) and (2) of this section work together to specify training requirements and clarify that all operators must be trained, regardless of whether an operator must be licensed/certified by any entity (including the U.S. military) to operate equipment.

Section 1926.1430(c)(2) of the 2010 crane rule, *Transitional Period,* is no longer needed because employees need to train all operators under this final rule. The requirements of previous § 1926.1427(c)(4) have been moved to paragraph (c)(3) of this section.

Sections 1926.1436(q)—Derricks, 1926.1440(a)—Sideboom Cranes, and 1926.1441(a) Equipment With a Rated Hoisting/Lifting Capacity of 2,000 Pounds or Less

As noted in the explanation for revised § 1926.1427(a)(2), OSHA had proposed to apply the employer evaluation requirements to the following group of equipment otherwise exempt from the requirements of § 1926.1427: Derricks, sideboom cranes, and equipment with a rated hoisting/lifting capacity of 2,000 pounds or less. To accomplish the application of the evaluation requirements, OSHA had proposed revising § 1926.1436(q) (Derricks), § 1926.1440(a) (Sideboom Cranes), and § 1926.1441(a) (Equipment with a Rated Hoisting/Lifting Capacity of 2,000 Pounds or Less) to require employers to evaluate operators according to the requirements in revised § 1926.1427(f).

One commenter (ID–1611) opposed any new evaluation requirements for derricks absent substantial evidence that this additional measure, which includes a requirement to document the evaluations, is warranted. In the 2010 final rule, OSHA relied on C–DAC's recommendation to exclude digger derricks, sideboom cranes, and low-capacity cranes (hoisting capacity at or below one ton) from the certification requirements of the standard and also went further in excluding this group of equipment from all of the requirements of § 1926.1427, including the phase-in requirement for employer assessment of operators in § 1926.1427(k). Instead, OSHA required employers to ''train each operator . . . on the safe operation of equipment the individual will operate'' (derricks and low-capacity cranes; see §§ 1926.1436(q) and 1926.1441(e)) or comply with the operator qualification provisions of ASME B30.14–2004 (sideboom cranes, see § 1926.1440(c)(10)). In the NPRM of this rule, OSHA also clarified that sideboom cranes would need to comply with the training requirements in § 1926.1430 (*see* proposed § 1926.1427(a)(2)).

In light of the concern about an unwarranted burden on employers raised by the commenter and the fact that OSHA had not previously explained its exclusion of this group of equipment from the phase-in assessment requirements in § 1926.1427(k), OSHA has decided not to change the status quo that has existed for the last eight years with respect to this group of equipment. OSHA still requires employers to train operators of this equipment in accordance with the requirements of this standard. The agency therefore is not requiring employers to comply with the evaluation or documentation requirements in § 1926.1427(f) when their operators use derricks, sideboom cranes, or low-capacity cranes. As a result, operators of this group of equipment do not have to comply with any of the provisions of § 1926.1427, so it is not necessary to revise § 1926.1436(q), § 1926.1440(a), or § 1926.1441(a) as proposed because those paragraphs already state that compliance with § 1926.1427 is not required.[25]

## 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), and 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, e.g.,*

[25] Another commenter was concerned that OSHA was changing the scope of the existing exemption for ''digger derricks,'' which is a group of equipment used primarily for electric utility and telecommunications construction (ID–1779). This limited exemption, which is in § 1926.1400(c)(4), removes digger derricks from the entire cranes standard, but only to the extent that employers are using this equipment for work covered by OSHA's electric utility standard for construction (Subpart V of 29 CFR part 1926) or telecommunications construction (29 CFR 1910.268). OSHA did not propose to change this exemption for digger derricks and is not altering the exemption in this final rule, so the new evaluation requirements in this final rule do not apply to operators of digger derricks exempted from the scope of the standard by § 1926.1400(c)(4).

*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 an 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, e.g., 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 Regulatory Flexibility Certification*

Introduction

When it issued the final crane rule in 2010, OSHA prepared a final economic analysis (2010 FEA) as required by the OSH Act (29 U.S.C. 651 *et seq.*) and Executive Order 12866 (58 FR 51735 (Sept. 30, 1993)). OSHA also published a Final Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). Both the 2010 FEA and Regulatory Flexibility Analysis are in Docket ID 422. On September 26, 2014, the agency included a separate FEA when it published a final rule extending until November 10, 2017, both the deadline for all crane operators to become certified, and the employer duty to ensure operator competency (79 FR 57785). In November 2017, OSHA published another extension for an additional year, until November 10, 2018 (82 FR 51986), which closely tracks the 2014 FEA analysis. For each rulemaking, OSHA published a preliminary economic analysis (PEA) and received public comment on the analysis before publishing the final analysis.

In the NPRM for the current rulemaking, OSHA included a PEA that relied on some of those earlier estimates, extensive agency interviews with industry stakeholders, crane incident data, and other documents in the rulemaking record. For example, the 2017 FEA for the deadline extension rule included a cost analysis of the employer evaluation to ensure operator competency. As a result, the cost estimates in the PEA in the current rulemaking were based on that analysis, which in turn is drawn from the 2014 FEA. Following the approach taken in the PEA, this Final Economic Analysis estimates new costs only for elements that have not previously been accounted for in either the 2010 final rule or in the deadline extensions. These are:

- Additional evaluations to ensure operator competency when there are changes not just in the type of crane (accounted for in the 2017 FEA) but also changes that would require new skills, knowledge, or ability to recognize and avert risk necessary to operate the equipment safely, including those specific to the use of equipment or its safety devices, operational aids, software, or the size or configuration of the equipment.
- The permanent status of the employer duty to assess competency. While the cost of employer's duty to assess operator competency was estimated in the 2017 rule, the duty to assess was assumed to phase out after the deadline had passed. This final rule makes this duty permanent, so these costs are included in this FEA.
- Documentation by employers. This rule now requires employers to document the successful completion of operator evaluations.
- Additional training required beyond the training necessary for certification.

Certain unit costs, such as the initial cost of operator certification and recertification every five years, are not re-analyzed in the FEA because they are unchanged by this rulemaking. The rule makes no changes that would impact the costs of certification by type of crane; OSHA simply allowed the existing operator certification deadline to be instituted as planned. The employer evaluation, which under the 2010 final crane rule (and the 2014 and 2017 extensions) was set to be phased out when certification took effect, remains in effect and is therefore a cost of the final rule. The unit costs of the employer evaluations were analyzed in the final rule of the deadline extension FEAs, and the agency relied on that analysis in calculating the ongoing evaluation costs in this FEA. In this FEA the agency has also updated wage rates to reflect the latest 2017 estimates that are from the same source as used in the PEA: Occupational Employment Statistics (OES), prepared by the U.S. Bureau of Labor Statistics. The PEA relied on 2016 wages because the 2017 data was not yet available in time for the preparation of the PEA.

The rule's cost savings are associated with withdrawing the requirement that crane operator certification be both for type and capacity of crane in favor of new regulatory text that certification be *required* only for type of crane.

For the PEA, OSHA included an overhead rate when estimating the marginal cost of labor in its primary cost calculations. Overhead costs are indirect expenses that cannot be tied to producing a specific product or service. Common examples include rent, utilities, and office equipment. Unfortunately, there is no general consensus on the cost elements that fit this definition, and the lack of a common definition has led to a wide range of overhead estimates. Consequently, the treatment of overhead costs needs to be case-specific. OSHA adopted an overhead rate of 17 percent of base wages.[26] This is consistent with the overhead rate used for sensitivity analyses in the FEA in the 2017 final rule on Improved Tracking (81 FR 29624) and the FEA in support of the 2016 final rule on Occupational Exposure to Respirable Crystalline Silica (81 FR 16286). For example, to calculate the total labor cost for a crane and tower operator (SOC: 53–7021), three components are added together: Base wage ($26.78) + fringe benefits ($11.92, slightly more than 44% of $26.78) + applicable overhead costs ($4.55, 17% of $26.78).[27] This increases the labor cost of the fully-loaded wage for a crane operator to $43.25. OSHA received no comments on this approach to estimating overhead costs and, as a result, has used the same approach in this FEA.

One change in costs for this FEA beyond updating economic data was

[26] The methodology was modeled after an approach used by the Environmental Protection Agency. More information on this approach can be found at: Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002 (ID–2025). This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule, Prepared for the Chemical Manufacturers Association, December 14, 1989.

[27] Throughout this chapter, OSHA presents cost formulas in the text, usually in parentheses, to help explain the derivation of cost estimates for individual provisions. Because the values used in the formulas shown in the text are shown only to the second decimal place, while the actual spreadsheet formulas used to create final costs are not limited to two decimal places, the calculation using the presented formula will sometimes differ slightly from the presented total in the text, which is the actual and mathematically correct total.

that the 2017 OES does not include the same occupation category for crane inspector (SOC 5353–1031 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators) that was in the 2016 OES and that was used in the PEA. The agency instead proxies the 2017 mean hourly wage for this SOC category by adjusting the 2017 OES crane operator hourly wage by the percentage markup of the 2016 crane inspector hourly wage over the 2016 crane operator hourly wage (8%, 28.75/26.58). The resulting estimated crane inspector hourly wage is $28.97 (26.78 × 1.08). Including a benefit markup of 1.45 (but not including overhead), the full hourly wages of a crane operator and crane inspector are $38.70 and $41.86, respectively.

As noted earlier in the preamble, OSHA received a comment from the National Propane Gas Association (NPGA, ID—1631), echoed by many others, questioning whether OSHA had accurately estimated the number of operators in the propane gas industry affected by the standard as follows:

> OSHA states that there are approximately 117,130 crane operators subject to the proposal and an annual cost to the proposal of $1,425,133. There is no indication that these estimates include the propane industry, which has about 40,000 propane field technicians who perform delivery and retrieval functions and, thus, would be subject to the third-party certification required by the proposal. * * * [T]he industry uses two types of cranes interchangeably to deliver or retrieve propane containers . . . [so] propane field technicians would require two certifications; one for each type of crane.

(ID–1631).

OSHA has previously accounted for the propane gas industry. In its 2010 FEA, OSHA estimated that ''each of the retail establishments has, on average, a truck-mounted crane that would be engaged occasionally in construction activity covered under the rule'' (see 75 FR 48087). OSHA also estimated in 2010 that there were a total of 5,567 establishments in the propane industry (NAICS 454312, Liquefied Petroleum Gas Dealers). Therefore, with an average of one crane per establishment affected by the standard, there were 5,567 cranes affected by the standard (Id.). OSHA continued to rely on these numbers in the economic analyses accompanying the two extension rulemakings in 2014 and 2017, treating the number of establishments as a proxy for the number of propane crane operators requiring certification under the standard.[28]

To support its claim that OSHA has underestimated the rule's cost to the propane industry, NPGA pointed OSHA to a recent study of the consumer propane industry in 2015 prepared by the Propane Education & Research Council (PERC) (see ID 1631, Part 2). NPGA relies on that study in asserting that OSHA underestimated the number of establishments, and therefore operators, in the PEA for this rulemaking. Specifically, NPGA claims that a new 4-Digit NAICS code for ''Fuel Dealers'' (45431) encompasses relevant propane establishments that are covered by the cranes standard but were not accounted for in OSHA's previous analysis of NAICS 454312, Liquefied Petroleum Gas Dealers (Id.).

Based on NPGA's comment, OSHA believes that it may have previously underestimated the number of covered establishments and has decided to increase its estimate in this analysis. Because the PERC study does not identify which establishments in the ''Fuel Dealers'' NAICS code are actually propane delivery firms that might occasionally engage in construction activity, OSHA has conservatively revised the industry profile to include all 8,341 of the establishments in that more general NAICS code. However, OSHA believes that many of these 8,341 establishments may not be propane delivery firms that engage in construction activity. This revision adds 2,774 additional establishments to OSHA's previous estimate of 5,567 establishments in the PEA. Continuing OSHA's methodology of estimating one certified crane operator per establishment, OSHA is estimating that there are 8,341 crane operators in this industry that occasionally use a crane for construction activity.

The NPGA's analysis takes a different approach, disregarding OSHA's approach of estimating the number of operators engaged in construction work per establishment. Instead, as quoted earlier, NPGA asserts that every operator possible—''about 40,000 propane field technicians who perform delivery and retrieval functions''—will use two different types of cranes, with each technician evidently requiring two different certifications under the theory that *each* technician uses *both types* of cranes for work covered by OSHA's construction standard (ID–1631). Thus, NPGA asks OSHA to assume that every propane field technician in the industry operates two different cranes and does so in situations involving construction activity, and that propane gas employers are ignoring standard measures of economic efficiency by having all employees engage in all tasks.

OSHA disagrees with this approach. Propane field technician operators would fall under the crane rule in only one very specific and limited scenario: Installation of new tanks (not replacement of existing tanks in kind) at a construction site. As the NPGA acknowledges, delivery occurs at a construction site ''a far lower percentage of the time'' than at non-construction sites and that OSHA's cranes standard applies to only ''a small percentage'' of propane delivery work (ID–1631). Indeed, another stakeholder from the propane industry estimated that only ''around 10 percent of new construction jobs (such as new homes in rural areas) annually will require propane delivery'' (Report #19 of ID–0673, p. 76). NPGA has not indicated that conversion of existing homes to propane from other sources (thus requiring the delivery of a brand new tank) constitutes any significant percentage of their deliveries. OSHA therefore concludes that propane deliveries covered by OSHA's construction standard constitute ten percent or less of propane employer activities.

OSHA notes that its conclusion is confirmed by a review of additional data. Using New Construction starts data from the US Census (at *https://www.census.gov/construction/nrc/pdf/quarterly_starts_completions.pdf*) the average number of construction starts (both single family and multi-unit) per year for the years 2015–2017 was 1,163,000. If 10% of the new construction starts involve the installation of propane, then 116,300 deliveries subject to OSHA's standard would be required. The same research group that created the 2015 propane report that NPGA relied on in its comments also provided an estimate that ''about 30,000 fuel oil households per year have converted to propane.'' [29] Adding this to the new construction estimate above gives a total of 146,300 deliveries of new tanks per year, which, based on NPGA's estimate of 40,000 operators in the propane industry, results in an average of 3.66 jobs per

[28] The NPGA did not dispute OSHA's estimates of the number of crane operators when it commented on the 2014 extension (ID–0487). In response to the 2017 extension, the NPGA only encouraged OSHA to ''consider more recent cost estimates'' but did not specify any new numbers (ID–0648).

[29] Sloan, Michael, *2016 Propane Market Outlook,* ICF International for the Propane Education and Research Council), p. 20, available at *https://www.afdc.energy.gov/uploads/publication/2016_propane_market_outlook.pdf* (visited 10/1/18).

propane operator per year (146,300/40,000).

Given that only operators engaged in construction activity must be certified under OSHA's standard, and that only a very small percentage of overall delivery activity constitutes construction activity covered by OSHA's standard, OSHA disagrees that all operators in this industry will require certification. While it is technically possible that every operator would go on two different jobs with two different cranes such that all would need two certifications, such an approach would ignore economic convention. As with specialized work in general, an economically rational employer will, in most cases, be able to assign a consistent operator to handle this small percentage of specialized activity rather than assuming the cost to have all of its employees prepared to engage in a small percentage of the employer's overall activity. OSHA therefore continues to estimate that each establishment on average will require one certified operator to handle the occasional delivery of tanks that would be covered by OSHA's construction rule.

OSHA's estimate is consistent with the information OSHA obtained during its interview with a propane distribution company that told OSHA it operates approximately 50 delivery centers in 11 states and maintains a fleet of 49 truck cranes (Id.), which is an average of almost one crane per delivery center. It is possible that a few establishments may require more than one certified operator due to special circumstances, but OSHA expects that number to be offset by the number of smaller establishments that would not be covered by OSHA's construction standard because they use equipment that is outside the scope of the standard (rated lifting capacity of less than 2,000 pounds). Such establishments would only engage in re-fueling existing tanks or replacing existing tanks in kind, or they only deliver new tanks to the ground at a construction site (see OSHA's June 27, 2016, response to Mr. Robert F. Helminiak, former Director of Regulatory Affairs for the National Propane Gas Association, that simply transferring propane tanks from the equipment directly to the ground is considered ''delivery'' and covered by applicable requirements of general industry standards, not construction standards. Included in NPGA's comments, ID–1631, Appendix b–3). Furthermore, OSHA believes that its adoption of the highest end of the potential number of establishments provides an adequate margin to account for differences between the one-operator-per-establishment estimate and the actual number of operators at each establishment who would be engaged in construction activity.

Due to these factors, the agency is not persuaded by the NPGA's economic analysis for either the number of operators or the cost of certification. OSHA has increased the number of affected establishments (and thus affected operators) in this FEA for this industry, but not to the extent proposed by NPGA.

The remainder of the FEA first discusses the estimates for each type of cost and cost savings and then summarizes the net cost savings. Subsequent sections discuss economic and technological feasibility, regulatory flexibility certification, and finally potential benefits of this final rule. For this FEA, OSHA reviews any comments about its estimates at the end of the relevant sections.

Given the updating of economic data, and the changes from the proposal to the final rule, the revisions to the standard will result in a cost savings of $1,752,000, at a 3 percent discount rate (versus the PEA estimated cost savings of $1,828,000), and $2,388,000 at the discount rate of 7 percent (versus the PEA estimated cost savings of $2,469,000k).

Evaluation Costs

This section evaluates two kinds of evaluation costs: (1) The addition of evaluations when operators change equipment, configurations, or tasks that require new evaluations; and (2) the addition of evaluation requirements for all new employees. OSHA also increased its estimates of how many operators would require evaluations as a result of the addition of more propane delivery operators, as discussed above.

As noted in the preamble explanation of this final rule, OSHA received feedback during stakeholder meetings, site visits, and interviews that, for a small percentage of employers, the proposed rule's requirements for additional evaluations for specific situations may have increased the number of operator evaluations they would conduct. The increase from previous estimates would result if employers need to conduct additional equipment-specific or task-specific evaluations.

To estimate the costs for the new evaluations required by this rule (evaluations of operator knowledge and skills required to operate different equipment or perform new tasks), the agency had taken the following steps in the PEA, and the agency followed the same methodology for the FEA. First, it estimated the number of new evaluations required by the proposed rule. Then it estimated the unit costs for each evaluation. Finally, the agency multiplied the number of evaluations times the unit cost to identify the total costs of the proposed rule due to new evaluations.

OSHA began its preliminary estimate of the number of evaluations by looking to its former rulemakings. In the 2017 deadline extension economic analysis, OSHA estimated employers' evaluations due to turnover of crane operators between employers, changes in the type of equipment operated for the same employer, and evaluations of operators new to the occupation. OSHA used the same estimate of total number of evaluations in the original 2010 crane rule.

In the 2017 deadline extension economic analysis, OSHA estimated the total number of new evaluations needed each year to be 30,981 evaluations (26,940 successful initial evaluations as well as 4,041 (15 percent of 26,940) for operators who have to be re-assessed (82 FR 51993)). The added propane field technician operators, with the standard 23% turnover and 15% re-assessment, contribute another 733 evaluations (23% * (1 + 15%) * 2,774) for a total of 31,715 evaluations each year.

However, after conducting extensive interviews with crane industry stakeholders for this rule, OSHA preliminarily determined in the PEA for this rulemaking that the agency had previously overestimated the number of new evaluations that the rule would require to be performed because OSHA had assumed that, in the absence of the rule, no employer would conduct evaluations. In fact, stakeholders reported that almost all employers conduct evaluations of new employees. As a result, the agency modified its estimates to estimate that 50 percent of employers (rather than 100 percent) would need to conduct such evaluations and, as a result, 15,490 annual evaluations would be attributable to this rule (83 FR 23559). The addition of the propane field technician operators, discussed earlier, adds another 367 evaluations (50% of the 733 total propane evaluations, as identified earlier) for a total of 15,857 evaluations each year that will occur as a result of this rule. The agency believes that even this estimate likely overestimates costs given that most employers conduct such evaluations and that assessments have been required for at least the last eight years under § 1926.1427(k). None of the commenters questioned OSHA's estimate that at least 50 percent of

establishments already provided the appropriate evaluations, and thus OSHA has not changed this estimate for this FEA.

In the PEA, OSHA also estimated a small increase in evaluation costs from those in the 2017 deadline extension analysis because of the additional specificity in this rule about when evaluations are required and what an employer must evaluate. Specifically, proposed § 1926.1427(f) required evaluation as necessary to ensure that the operator maintains the ''skills, knowledge, and judgment necessary to operate the equipment safely'' and to perform assigned tasks, including specialty lifts such as blind lifts or multi-crane lifts. A similar version of this requirement is included in this final rule (with the replacement of ''judgment'' with ''ability to recognize and avert risk'') and therefore OSHA retains this estimated increase in evaluation costs for this FEA.

In the PEA, OSHA preliminarily estimated that the proposed rule's specificity would lead to an additional 15 percent of evaluations, on top of the 15,490 evaluations conducted to comply with the less specific prior rule (83 FR 23559), or 2,324 ''new evaluations.'' OSHA explained that the stakeholder meetings and extensive OSHA interviews indicated that this new language would not require many employers to change their existing operator evaluation practices. Even before its 2010 rulemaking, OSHA required employers engaged in construction to ensure that their operators were capable of operating their equipment safely (§§ 1926.550 and 1926.20(b)(4) prior to promulgation of the crane standard on November 10, 2010). So for most employers, this final rule will simply be a requirement to continue their existing evaluation practices. OSHA further noted in the proposal that none of the stakeholders OSHA met with expressed any concerns about their ability to comply with these requirements (83 FR 23559). None of the commenters contested OSHA's estimate of a 15 percent increase in evaluations or disputed the agency's assessment of existing practices.

In this FEA the agency again estimates that this rule will add 15 percent more evaluations, but that 15% is calculated from a higher total number of operator evaluations that includes the additional 367 propane operators. Thus, in this FEA OSHA estimates that there will be an additional 2,379 (15% × 15,857) ''new evaluations'' as a small percentage of employers increase their evaluations of operators who are switching equipment or performing more difficult tasks. This represents a very small percentage of the total costs of evaluations.

The second element needed in order to estimate the total cost of evaluations is the unit costs for these evaluations. OSHA's unit cost estimates for evaluations, which are unchanged from the PEA except for increases in wage rates, took into account the time needed for the evaluation, along with the wages of both the operator and the specialized operator evaluator who will perform the evaluation. In its 2017 FEA, OSHA estimated that an initial evaluation of an experienced operator with a compliant certification would take, on average, one hour (82 FR 51992). The new evaluations generated by the specificity of the rule would all be for previously evaluated, experienced operators who are adding a new skill or new knowledge to an existing skill set, not an initial evaluation for a brand new operator or an experienced employee new to the firm. Thus, in many cases any evaluation time will be minimal.

Due to the specificity of the evaluation requirement in this rule, OSHA included the ongoing cost for the initial evaluations, which it had estimated previously in the 2017 FEA. These evaluations will continue to be necessary because of turnover of crane operators between employers, changes in the type of equipment operated for the same employer, and evaluations of operators new to the occupation. The total cost for these evaluations in this FEA is lower than the total evaluation cost estimated in the 2017 FEA. This is partly because the evaluations cost in the 2017 FEA was for an operator population that was a mix of operators with a compliant certification (certified by both the type and capacity of crane), non-compliant certification (by type but not capacity), and no certification. The time for evaluation, and hence its cost, was linked to operator certification status and varied for these three types with the least time (one hour) for an evaluation of an operator with a compliant certification. The new final rule removes the existing requirement for certification by capacity, meaning there would be no operators in the previously estimated ''non-compliant certification'' group. This means that all operators would receive evaluations for operators with a compliant certification and hence will have the same unit cost for a one-hour evaluation. The hourly wage of the evaluator was estimated to be the same as the hourly wage of occupation First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators (SOC: 53–1031 from the BLS 2016 OES dataset updated to 2017) of $46.78 in 2017 dollars including a markup for fringe benefits and overhead.[30] The operator's time is valued at the wage plus fringe benefits of occupation Crane and Tower Operators (SOC: 53–7021) plus overhead, at $43.25. Hence, the combined hourly cost for an evaluation or a training episode is $90.04 ($43.25 + $46.78).

Multiplying that unit cost by the 15,857 initial evaluations estimated in this FEA, the total annual cost for these ongoing initial evaluations is $1,428,000 ($90.04 × 15,857).[31]

The total cost for the 2,379 new evaluations, which are for experienced operators who are adding a new skill or new knowledge to an existing skill set, is therefore the product of multiplying that unit cost by the total number of evaluations: $22.51 × 2,379 new evaluations = $54,000.

The total annual cost for evaluations is therefore $1,481,000, which is the sum of the $1,428,000 in initial evaluations and the $54,000 for new evaluations.[32]

No commenter raised specific objections to the estimates used in the PEA for the costs of evaluation. Some comments suggested generally that OSHA's preliminary estimate of the number of evaluations was low, based on an apparent misunderstanding of the standard (see, *e.g.,* ID 1623, 1801). For example, one commenter (ID–1801) was concerned that OSHA's requirement to document the make and model of crane on which an operator was evaluated meant that OSHA would require a separate evaluation for every single make and model of crane that a crane operator might use. This is not the case. While the employer must list the make and model of the crane that the operator was evaluated on, the employer can then rely on that evaluation as a baseline and allow the operator to use other cranes that do not require significant new skills, knowledge, or ability to identify and avert risk in order for the operator to operate the equipment safely. Another commenter (ID–1623) states that ''One crane company alone testified [at an ACCSH meeting] that the cost to document all of his employees on every crane he owns, with each capacity, configuration and new additional requirements would cost him more than ONE MILLION dollars.'' The commenter did not provide any explanation or basis for that

[30] The fringe markup is 1.45, derived from the BLS Employer Costs for Employee Compensation, Private Industry Total Benefits for Construction Industries March 2018.

[31] Totals may not add up due to rounding.

[32] Totals may not add up due to rounding.

amount, and the agency does not find this plausible and suggests it is a misreading of the rule. OSHA's single evaluation cost is $90.04, so to reach one million dollars in cost for a single employer, that employer would have to do 11,106 evaluations each year (1,000,000/90.04).

Other commenters expressed some confusion about who had to conduct the evaluation. Some asked if an employer renting a crane with an operator(s) had to conduct its own evaluation (see ID–1495, ID–1615). This is not required. The crane rental company is the employer of the operator in that scenario and carries the duty to evaluate its operator. Thus, there is no expense for an additional evaluation for operators who are provided with rented cranes. Some small businesses were concerned that they might not have an employee with the expertise to evaluate a crane operator (see ID–1495.) The employer is responsible for assuring that an operator has been evaluated, but need not conduct that evaluation itself. The employer can, for example, arrange for an evaluator from another organization, such as a labor organization or crane operator training company, to serve as its agent and evaluate a crane operator from a union hiring hall.

Employer Evaluation Documentation Costs

The rule adds a new documentation requirement for a successful evaluation. In both the PEA and the FEA, OSHA estimated the annual evaluation documentation costs using the following three steps: It estimated unit costs of meeting this requirement; estimated the total number of cases of documentation that employers will need to perform in any given year; and multiplied unit costs of documentation by the number of cases to determine the annual costs.

This final rule requires that employers document information about the equipment that the operators is evaluated on (make, model, and configuration) and include the evaluator's signature. Because of this, the agency determined that the evaluator will complete all recordkeeping related to this documentation. OSHA's unit cost estimates for evaluation documentation take into account the time needed and the wage of the employee who completed the documentation. The time needed for creating and filing the needed information is estimated to be 5 minutes of the evaluator's time. As above, the hourly wage of the evaluator is estimated to be $46.78. Hence, the cost of documenting a successful evaluation is $3.90 ((5/60) × $46.78).

The revised standard does not require employers to re-evaluate operators who have already previously demonstrated that they have the skills, knowledge, and abilities to operate the employer's equipment safely. The employer may rely on previous assessments of these operators, but must still document their qualifications (see preamble discussion of § 1926.1427(f)(1)(iii) and (f)(4)). In the PEA, the agency preliminarily determined that employers would have documented most evaluations in the past, but estimated the number of past evaluations still needing documentation at 15 percent of the number of operators, or 17,570 (15% × 117,130) (see 83 FR 23560). This approach assumed that each employer would need to document employees evaluated within the year prior to effective data of the rule, but not all existing employees. To account for the one time need to document the evaluations for all existing employees, and not just those hired in the last year, OSHA is assuming all employees not hired in the last year (85 percent derived as 100 percent minus the 15 percent new in that year) would need to be documented. The FEA is thus raising the number of evaluations needing documentation to 85 percent of the number of operators, or 99,561 (85% × 117,130), thus taking account of the need to document past or ongoing evaluations of all employees.

With the addition of 2,774 propane field technician operators, the total number of evaluations needing documentation is estimated to be 102,335 (99,561 + 2,774) in this FEA. This estimate is based on the final rule's clarification that all evaluations of existing employees must be documented, but existing operators at the time the rule becomes effective do not need to be re-evaluated from scratch. This estimate assumes that all existing employees not subject to turnover or changes in equipment will need new documentation. This almost certainly overestimates the need for documentation because it ignores existing documentation practices, which OSHA's interviews with stakeholders indicate exist. This total extra first year cost is $399,000 ($3.90 × 102,335). Annualized over 10 years at a 3 percent discount rate gives an annualized cost of $47,000. At a discount rate of 7 percent, this annualized cost is $57,000.

Employers are only required to document successful evaluations, and OSHA estimates that 15% of the operators will fail their evaluations. As noted above, OSHA estimates 15,857 initial evaluations and 2,379 new evaluations, for a total of 18,236 evaluations. With this 15% failure rate, only 15,857 evaluations would require documentation (18,236/1.15). OSHA calculated that the total annual documentation cost, absent the first year extra documentation costs for existing, previously evaluated operators, is $62,000 ($3.90 per evaluation × 15,857 evaluations).

In the PEA, OSHA requested comment on its estimates of the documentation costs. While none of the commenters dispute any of the individual components of OSHA's documentation cost estimates, most of the same comments that expressed concern about costs because of an apparent confusion about the number of evaluations that would be required also raised the same concern about the number of documentations and resulting costs (ID–1623, 1801).

Employer Costs for Operator Training

The final rule clarified the operator training requirements as proposed, and OSHA retained the same methodology in its analysis of the training costs. As explained in the 2010, 2014, and 2017 rulemakings, employers were already required to train their operators prior to the 2010 rule, and OSHA did not estimate additional training costs other than costs of optional certification preparation training classes in its recent rulemakings (see, *e.g.,* 75 FR 48097). The revised rule clarifies that the training already required under the previous rule continues to be required even after an operator is certified, including training necessary when an operator requires new knowledge or skills because of a change in equipment or tasks. Although OSHA's site visits and interviews indicated that most firms are already providing the required training, including the additional training necessary to ensure that certified operators have the skills and knowledge to operate new equipment or perform new tasks, OSHA calculated costs for additional trainings that may occur as a result of this clarification.

OSHA's calculation of the cost of these additional trainings required several steps. First, OSHA estimated the average annual number of equipment-specific or task-specific trainings as a percentage of the new evaluations required by the rule, as estimated earlier. OSHA expected the number of trainings to be a subset of the number of evaluations because in many cases the operator will already possess the required skills necessary for a new piece of equipment or a new task and be able to demonstrate competency after only a cursory explanation of the differences.

For example, an experienced operator conducting a blind lift for the first time may have sufficient mastery of the equipment such that she could pass an evaluation after only a very brief discussion of the signals to be used. In the PEA, the agency judged that 50 percent of the new evaluations, or 1,162 evaluations (50% × 2,324), would also require trainings (83 FR 23560–23561). OSHA did not receive any comment on this estimate. Using the same estimates for the newly included propane field technician operators adds 28 additional evaluations (15% of 366 evaluations is 55, and 50% of 55 is 28) that will require additional training for a total of 1,189 (1,162 + 28) instances where additional training will be needed.

The second step is to identify an average amount of time that each training will take. Some trainings are likely to require detailed instructions about operating particular equipment and discussions of protocol prior to a lift. Other trainings might involve a very short period of instruction, such as to familiarize an experienced operator with the setup of standard controls in a different crane of the same type with which the operator already has experience. While OSHA lacked data about the frequency of these different types of trainings, it estimated in the PEA that the average time for each training is one hour (83 FR 23561). For context, this is the same amount of time that OSHA previously estimated that it would take for an inexperienced operator to take the practical portion of the standard crane operator test. OSHA solicited comment on this one-hour estimate, but received none. OSHA has therefore relied on the same estimate in this FEA.

OSHA expects two employees to be occupied during this hour of training: The equipment operator and the trainer. Using the same wage estimates as above, the hourly wage for the operator would be $43.25 and a supervisor's hourly wage of $46.78 for the trainer. However, not all of the training time will result in a loss of productivity to the employer. OSHA's site visits and interviews indicate that it is common for operators to spend at least some of the training time operating the crane under the instruction of the trainer, performing tasks that actually are useful for the employer. While all of the trainer's time is an opportunity cost for the employer, at least part of the operator's time results in productivity for the employer. OSHA estimated in the PEA that, on average, 75 percent of the operator's training time (45 minutes of the hour) would consist of pure instruction or other activities that would not be productive for the employer (Id.). OSHA requested comment on this estimate but received none and is therefore relying on that estimate in the FEA. Based on the estimated one hour for each training, the unit cost for each training is therefore the supervisor's wage for one hour ($46.78) plus $31.95 in operator's wages for the 45 minutes of non-productive time (Three quarters of the operator's hourly wage of $43.25), or $79.22 per training. Thus, the total cost of the training industry-wide is $94,000 ($79.22 × 1,189).

Cost Savings of Avoiding Additional Certifications

Absent this final rule, all crane operators who are currently certified only by crane type would have needed to obtain certification both by type and capacity. This final rule removes the requirement for certification by capacity and allows employers to rely on either ''type and capacity'' or ''type only'' crane certifications, leaving only certification by crane type as the obligation of the crane standard. To calculate the cost-savings of additional certifications that would be avoided by the final rule, OSHA estimated the number of crane operators not yet in compliance with the type-and-capacity certification requirement and multiplied that estimate by the estimated cost of obtaining such certification.

Based on OSHA's previous rulemakings, OSHA estimated that 71,700 crane operators do not yet possess a type-and-capacity certification. (82 FR 51993). Although the 2014 FEA estimated a gradual decline over time of the number of such operators (an estimate of 61,474 in 2016, see Table 1, 79 FR 57796), the 2017 extension estimated that 71,700 operators were not yet in compliance and would not be for much of 2017 and 2018 leading up to the new 2018 deadline. (see Table 1, 82 FR 51995). In the PEA, the agency accordingly estimated the number of operators certified by crane type only would remain at 71,700 each year and no commenters provided better data. OSHA adopted this approach because 71,700 was the last hard data point the agency had, and relies on it again in the final rule.[33] Certification has likely gradually spread as an expected job qualification in the crane operator job market, so it is quite possible that the number of operators possessing a type, but not type-and-capacity certification, is actually higher today. The largest certification school issues a certificate by type only, which means there may be additional cost savings that OSHA is not attributing to this final rule since there are more operators certified by type only who would not have to become certified by type and capacity.

OSHA looked to the 2017 deadline extension rule to estimate the unit cost of a type and capacity certificate. There, the agency estimated that such a test would take 2.5 hours and require a $250 fixed testing fee (82 FR 51994). At the hourly crane operator wage noted above ($43.25), the total cost for a compliant certification is $358.13 ($250 + (2.5 × $43.25)). If 71,700 crane operators needed to take the test, the cost would be $25,678,000 (71,700 × $358.13). These costs include only the time and costs necessary for certification, and do not include the costs necessary for training for the certification examination, which would occur prior to taking the type-only examination. Because this rule would remove the requirement for additional certifications by capacity, that amount becomes a cost saving.

Commenters presented two different challenges to OSHA's estimates of the unit cost for certification. The NPGA's comment, mirrored in many of the comments that were part of a mass mailing from the propane industry, claimed that the unit cost for two certifications is $3,790, which would be $1,185 per certificate ((ID–1631, Part 2). However, the NPGA's estimates are for a brand new operator (including preparatory class time as well as the tests), which is different than the cost that OSHA estimated here for the purpose of determining costs savings from avoiding an *additional* certificate for an operator who already has a type-only certificate.[34]

The IUOE identified a per-certification cost from NCCCO of $225, which is slightly lower than OSHA's estimate of $250 (ID–1816). But the IUOE estimate does not account for the hourly cost of the operator's time to take the certification exam. The agency notes

[33] Note that this 71,700 operators is not impacted by OSHA's increase in the total number of operators to account for additional propane industry operators because this number only reflects operators certified by type of crane, but not capacity, who would have needed to obtain a new certificate by capacity. The NPGA has indicated that the majority of its operators have not yet obtained any certification under the hope that they would be excluded from the standard, so those operators are not included in the group of 71,700.

[34] The economic analysis used by the agency to estimate costs for new operators (those without any certificates) results in a comparable number that is actually slightly higher than NPGA's estimate. See, for example, the 2014 deadline extension analysis: ''OSHA estimated that training and certification costs for an operator with only limited experience would consist of $1,500 for a 2-day course (including tests) and 18 hours of the operator's time, for a total cost of $2,141.16.'' (79 FR 57794).

that its estimate costs the average price in the market, not a single firm, and believes its current costs are reasonable. Note to the extent the agency is underestimating costs this means its estimate of cost savings is too low.

This, of course, is a one-time cost savings, while costs of continued evaluations and most of the other cost elements of the rule are ongoing. Using the agency's standard 10 year horizon, the result is an annualized cost savings of $3,010,000 at a discount rate of 3 percent, and an annualized cost savings of $3,656,000 at a discount rate of 7 percent.

The agency estimates there will also be ongoing cost savings due to a number of certifications that would have only been needed for a change in capacity (but not type) and hence no longer will be needed. More than half of certified crane operators have been certified by a certifying body (including state and local governments) that does not issue certificates by capacity, which indicates that many of these operators may not need multiple capacity certifications. OSHA conservatively estimated the value of this cost savings by taking 50 percent of the 2,379 additional evaluations, or 1,189 ($0.50 \times 2{,}379$) as an additional number of annual certifications that would have been required solely due to changes in crane capacity but not crane type. The unit cost for this certification follows previous analysis in assigning a $250 flat fee for the certificate, as well as 1.5 hours of the operator's time for the written exam and 1 hour for the practical exam. This gives a unit cost of $358.13 ($250 + ($2.5 \times \$43.25$)). Finally, the total annual cost savings for these avoided certifications is $426,000 ($1{,}189 \times \$358.13$). Hence, along with the one-time cost savings due to omitted certifications, the total cost savings for these two elements are $3,436,000 ($3,010,000 + $426,000) at a 3 percent discount, and total cost savings for these two elements of $4,082,000 ($3,656,000 + $426,000) at a 7 percent discount rate.[35]

As noted above, OSHA may be somewhat underestimating the cost savings of this final rule, which would offset any potential underestimation of costs. Regardless, this has no effect on the economic feasibility of this rule.

Total Cost of the Final Rule

The total annual cost of the final rule comprises the cost items identified above: Evaluations (those previously calculated with offsets from the removal of the requirements to certify by capacity and with the additional evaluation costs to account for new skills and tasks), documentation of the evaluations (including the one-time first year evaluation documentation for existing, currently employed operators without such documentation), and training costs. The cost savings is due to averting the need for all operators who currently have a type only certification to obtain a type-and-capacity certification. Since the last item is relatively large and primarily occurs in the first year while the other costs are ongoing, the discount rate and discount horizon have a significant impact on the final total cost. At a discount rate of 3 percent the sum of those parts is a cost savings of $1,752,000 ($1,428,000 + $54,000 + $62,000 + $94,000 + $47,000 − $3,010,000 − $426,000). Using a discount rate of 7 percent there are cost savings of $2,388,000 ($1,428,000 + $54,000+ $62,000 + $94,000 + $57,000 − $3,656,000 − $426,000).[36]

Here is a summary table of all the costs:

SUMMARY TABLE-ANNUALIZED COSTS

| | 3% Discount rate | 7% Discount rate |
|---|---|---|
| initial evaluations | $1,428,000 | $1,428,000 |
| new evaluations | 54,000 | 54,000 |
| ongoing documentation evaluation | 62,000 | 62,000 |
| Training | 94,000 | 94,000 |
| initial evaluation documentation (annualized) | 47,000 | 57,000 |
| non-capacity certifications, current population (cost savings, 10 years annualized) | (3,010,000) | (3,656,000) |
| non-capacity certifications, ongoing (cost savings) | (426,000) | (426,000) |
| Total | (1,752,000) | (2,388,000) |

Economic and Technological Feasibility

The agency has determined that the proposal is technologically feasible because many employers already comply with all the provisions of the revised rule and the rule would not require any new technology. Ignoring cost savings, the cost elements of significance for this rule making are the evaluation requirement with associated training of $79.22 per training and $90.04 for each operator evaluation, for a total of $169.25 per operator, which should be a small expense for the businesses covered under this rule. The vast majority of employers already invest the resources necessary to comply with the provisions of the standard. Hence the agency preliminarily concludes that the standard is economically feasible.[37]

Certification of No Significant Economic Impact on a Substantial Number of Small Entities

The largest cost element of the revisions to the rule is an evaluation requirement with associated training of $79.22 per training and $90.04 for each operator evaluation, for a total of $169.25. Small businesses will, by definition, have few operators, and the $169.25 cost for each operator evaluation with training will not be a significant impact for even the smallest businesses. At an hourly wage of $43.25, the annual salary for an operator is $86,500 ($\$43.25 \times 8 \times 5 \times 50$), so this operator evaluation cost is 0.2% (169.25/86,500) of an operator's annual salary. Hence, OSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

[35] Totals may not add up due to rounding.

[36] Totals may not add up due to rounding.

[37] A number of commenters questioned the impact of the standard's requirement for operator certification on their industries (see for example 1612, 1631, 1746 and many other comments from the propane gas industry). The requirement for operator certification is already part of the standard and the removal of that requirement is beyond the scope of this rulemaking, as explained earlier in the preamble to this rulemaking. OSHA demonstrated the economic feasibility of operator certification requirement in the 2010 rulemaking; the agency need not re-analyze it in this rulemaking, which addresses certification only to the extent that it *reduces* the number of certifications required by the standard.

As with economic feasibility, there were a number of commenters focused on the impact of the standard's requirement for operator certification on OSHA's preliminary determination that the rule would not have a significant impact on a substantial number of small businesses. As noted in the economic feasibility analysis, this rulemaking addresses certification only to the extent that it *reduces* the number of certifications required by the standard.

Benefits

OSHA's 2010 Cranes and Derricks in Construction standard included an extensive analysis of the benefits attributed to preventing crane-related fatalities and serious injuries. In that analysis, OSHA relied on IMIS injury data made available in 2008 (see 75 FR 48093), finding that the standard would prevent 175 injuries and 22 fatalities per year for a total annual benefit of $209.3 million (75 FR 48079–48080).

OSHA, in the proposal for this rule, preliminarily concluded that allowing certification by type only would result in no loss of benefits. OSHA received only one comment challenging that conclusion. That commenter, a representative of a certification body that issues certifications by capacity, claimed that ''[r]etaining capacity will require more stringent testing resulting in an increase in crane safety, thus fewer accidents,'' (ID–1235), but this commenter did not provide further explanation of why the testing would be more stringent or any evidence that it would increase safety.

While testing organizations differed over whether a certification by capacity provided any useful information to an employer, the remainder of the commenters agreed that capacity is just one factor to be considered in the employer's overall evaluation of the operator's ability. Only one commenter opposed removing certification by capacity, but even that commenter did not point to any specific loss of safety benefits. The majority of commenters that responded to this issue support removing the certification by capacity requirement (ID–0690, 0703, 0719, 1611, 1616, 1619, 1628, 1632, 1719, 1735, 1744, 1755, 1764, 1768, 1801, 1816, 1826, 1828). None of the commenters supporting the removal of the requirement for certification by capacity indicated that the removal of that requirement would result in any loss in safety benefit. An industry group whose membership uses cranes for roofing work stated that capacity ''did very little to advance the safe operation of cranes at construction jobsites'' (ID–1619). A local chapter of a labor union noted that the two certification bodies that offer certification by capacity did not offer any safety evidence to the agency in OSHA's previous public hearings or stakeholder meetings (ID–1719). Referring to consensus standards and industry best practices, a national labor organization implied that there is no industry recognition of a safety benefit from certification by capacity, noting that ASME B30.5 ''does not describe testing or examination by capacity,'' and the organization ''is not aware of any state or local regulatory body . . . that requires certification or licensing by both type and capacity'' (ID–1816). In its request for comments on this issue, the agency specifically asked for information that demonstrated the safety benefits of certification by capacity, but it did not receive any such information.

As noted in the sections on ''Background'' and ''Need for a Rule,'' OSHA received significant feedback from stakeholders following the 2010 final rule indicating that the standard, to be fully effective, would need to preserve the employer duty to evaluate operators separately from the general operator certification requirement. Certifications are intended to address basic operator knowledge and skills, but do not assess operators' familiarity with the actual equipment they will operate or the specific tasks they will perform. The amendments to the standard in this rulemaking make that employer duty permanent and add specificity, thereby ensuring that the full benefits of the standard will be realized.

The safety benefit of the rule is the prevention of injuries or fatalities resulting when operators certified to operate the type of crane assigned still lack the knowledge or skill to operate that crane for the assigned task. As noted earlier, there are many variables in equipment and controls between different models of the same type of crane, and there are many crane operations that require additional knowledge and skill beyond that demonstrated during certification (*e.g.,* swinging a ''headache ball'' instead of lifting a load, performing a blind lift, participating in a multi-crane lift, etc.). Certification does not address these variables or provide assurance that the operators are qualified to safely operate the equipment for the task assigned, so without these amendments operators could be permitted to perform equipment operations after November 2018 that they are not qualified to operate safely. OSHA has already determined that there is a significant risk of injury when operators are allowed to operate heavy machinery that they are not qualified to operate.

The 2010 crane rule estimated annual net benefits at $55.2 million in 2010 dollars (75 FR 47914). Since there are cost savings for this final rule, net benefits of the joint 2010 final rule and this final rule are vastly greater than zero.

While this rule attempts to realize the full benefits already identified in 2010 for the standard, and OSHA need not parse the benefits of each provision of the standard separately, OSHA recognizes that the revision to the standard is also likely to generate additional benefits from the more specific requirement for employers to evaluate operators on specific equipment for specific tasks. To explore this, OSHA conducted further analysis of recent IMIS incident reports in an effort to illustrate the new benefits of the evaluation requirements beyond the benefits that would be achieved through the previous standard with operator certification alone.

OSHA looked at IMIS accident reports for 2009–2013, years subsequent to the data used for the FEA for the 2010 rulemaking. All accidents with any of the search terms ''boom,'' ''crane,'' or ''pile driver'' in either the event description or in the abstract were examined, the same keywords as used in the analysis for the 2010 final rule. OSHA identified incidents where there was an express mention in the IMIS description that the crane operator was unfamiliar with the specific crane equipment used during the incident, or with the specific task. Using this methodology, the agency has been able to identify three fatalities that may have been prevented if the updated evaluation requirement had been in place at the time. It is true that there was a general duty to ensure operator competency at the time of these incidents (see §§ 1926.20(b)(4) and 1926.1427(k)(2)). But, as explained above, that previous employer duty was stated very generally and employers might have believed that a preliminary general examination of the operator could satisfy the requirement without accounting for evaluation of the operator's ability to operate different models of the same type or perform new tasks.

OSHA believes that the revised rule, which makes the evaluation duty permanent and includes more detailed evaluation documentation requirements, would make it more likely an employer conducts the appropriate type of evaluation and therefore more likely that such incidents would be avoided in the future. By specifying the elements to

be evaluated, OSHA expects the evaluations to be more effective at preventing injuries by identifying operator limitations in a timely manner. For example, the employer might have believed it was complying with the previous general employer duty if it evaluated an operator and found that the operator was qualified to operate a particular crane to lift pallets of material, even though the employer did not perform any additional evaluation before assigning the operator to a lift that required additional skills, such as a blind lift or lifting poles instead of pallets. As indicated by the second IMIS example below, there is greater risk of injury if the operator is not qualified to perform the new task. OSHA expects the documentation requirement to assist employers in complying with the different evaluation elements of the standard. And OSHA expects that the documentation requirement will facilitate communication between supervisors and operators and help avoid assignment of an operator to equipment or tasks for which he or she is not qualified, thereby reducing the risk of injury from unqualified operation.

The IMIS summaries are not particularly detailed or uniform, so many more of these incidents may also have involved similar operator failures that were not explicitly detailed in the IMIS summary. But the complete IMIS abstract of each fatal incident follows.

Case One: Operator not competent to use specific equipment:

At approximately 2:50 p.m. on June 16, 2009, an employee was walking toward a seawall the company was reconstructing when a section of the boom failed and fell on him. The employee was killed. The crane had been built in 1964, and was bought by Ray Qualmann Marine Construction, Inc. on April 29, 2008. The company never performed an annual inspection of the crane or a monthly one, and documentation was not available to indicate any maintenance had been done to the crane. The only documentation available for the crane was an inspection report dated June 10 2009, made by a crane operator who worked for the company, which failed to identify that the crane did not have a boom angle indicator, that several lacings were bent on it, and that the angles and spacing of the repaired lacings were uneven. In addition, neither the crane operator who operated the crane on the day of the accident, nor the foreman, had ever seen the operator's and maintenance manual for the crane involved in the accident. The crane operator was not familiar with the controls of the crane. The operator did not know the weight of the load, and did not know the length of the boom. The crane was overloaded when the accident occurred.

The general manager of Ray Qualmann Marine Construction claimed that the operator had extensive crane experience and had worked for the company for more than 20 years. OSHA concluded in its investigation, however, that the company allowed the operator use of the Link-Belt LS–58 crane with no training for this equipment. The abstract indicates that the lack of familiarity with the specific equipment used contributed to the fatality. An evaluation of the operator's competency on the specific equipment, rather than the general skills and knowledge tested as part of the third-party certification process, would have been more likely to identify the problem in this case and avoid the resulting fatality.

Case Two: Operator not competent to perform specific task:

On November 17, 2009, employees with Moreau's Material Yard were driving pilings for an oil rig foundation in which a 4,000 lb hammer, attached to the top of the lead, was used to drive 70 to 75 ft poles into the ground. Employee #1 was working on a crawler crane platform approximately 20 to 25 ft above the ground. He was wearing a harness with a lanyard connected to a ladder rung. When the crane tipped over, Employee #1 attempted to jump from the platform to the ground below. He was struck by the crane and killed. The crane operator sustained minor injuries. Other employees indicated that the employer had never lifted poles of that size and the crane boom may have been used at an improper angle for the load being carried.

It is clear from the IMIS report that the operator was familiar with crane equipment but had never lifted poles of that size. While all of the details of the task are not included in the abstract, the note about the different pole size and the operator's use of an improper boom angle suggest that the activity was significantly different from previous activities such that it would have required different knowledge or skills. This incident and resulting injuries might have been prevented if the employer took the time to evaluate the operator for the specific task assigned.

Case Three: Operator inadequately trained:

On June 23, 2011, Employee #1, an ironworker, was installing a structural steel bracing and painting structural steel beams in the ceiling of a manufacturing plant addition. Employee #1 was working alone from a boom-supported aerial work platform that was borrowed from another employer. At approximately 11:15 a.m., an electrician walked into the area and found the aerial work platform elevated with Employee #1 slumped over the controls. Employee #1 was crushed between the work platform and one of the ceiling beams. Other tradesmen at the worksite used the ground controls to lower Employee #1 to the floor. Employee #1 died from the injuries. Employee #1 had been trained in operating a boom-supported aerial work platform by his employer, but was not trained in the differences between those aerial work platforms that were owned by the employer and the borrowed lift being used the morning of the incident. The drive controls on the borrowed aerial work platform may have been reversed from the actual direction that they would operate.

The abstract does not include enough information to be certain as to whether the ''boom-supported aerial work platform'' was equipment that would be covered by the crane standard (it could be a simple aerial lift not covered by the standard, or a boom crane or multi-purpose machine configured to support the work platform in a manner that would be within the scope of the standard). Nevertheless, the incident illustrates the potentially fatal consequence of requiring an employee to operate new equipment without ensuring that the employee can account for differences in control locations and functions. Like the previous cases, the employee received training for certain crane equipment but lacked the skills necessary to operate the borrowed machinery used on the day of the accident. Had the employee been evaluated by his employer before using the equipment, the employee's unfamiliarity with the equipment could have been identified earlier and the fatality might have been prevented.

OSHA presented the same analysis of benefits, including these IMIS summaries, in the NPRM and received no comment challenging OSHA's analysis of the benefits of the rule or of the IMIS summaries provided. As discussed in the Summary and Explanation, most commenters agreed with OSHA's conclusion that evaluation improves safety, even if the effect could not readily be quantified. While there were many suggestions as to the best approach to the requirements for employer evaluation, there was virtually no opposition to the basic concept of requiring employers to evaluate their operators.

### *C. Paperwork Reduction Act*

#### Overview

The final ''Cranes and Derricks in Construction: Operator Qualification'' rule contains information collection (paperwork) requirements that are subject to review by OMB. The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to

respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Solicitation of Comments

OSHA published two separate **Federal Register** notices that allowed the public an opportunity to comment on the proposed Information Collection Request (ICR) containing the information collection requirements in the proposed rule for 60 days, as required by 44 U.S.C. 3507). The NPRM provided an initial 30 days for the public to comment on the ICR corresponding to the general comment period for the rulemaking (83 FR 23534), and OSHA published a second companion notice to the NPRM on July 30, 2018 (83 FR 36507), allowing the public an additional 30 days to comment on the information collection requirements contained in the proposal. Concurrent with the proposed rule, OSHA submitted the ICR to OMB for review (ICR Reference Number 201710–1218–002) in accordance with 44 U.S.C. 3507(d).

On July 31, 2018, OMB issued a Notice of Action (NOA) assigning the proposal's ICR a new control number, 1218–0270, to be used in future ICR submissions. OMB noted that this action had no effect on any current approvals. OMB also noted that the NOA is not an approval to conduct or sponsor the information collection contained in the proposal. Finally, OMB requested that, ''Prior to publication of the final rule, the agency should provide a summary of any comments related to the information collection and their response, including any changes made to the ICR as a result of comments. In addition, the agency must enter the correct burden estimates.''

The proposed rule invited the public to submit comments to OMB, in addition to OSHA, on the proposed information collection requirements with regard to the following:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

OSHA received three public comments [38] on the proposed ICR that are addressed in the agency's final ICR analysis. In addition, OSHA received a number of comments in response to the proposed rule, described earlier in this preamble, that also addressed several information collection requirements (primarily the requirement to document evaluations) and contained information relevant to the burden hour and costs analysis in the ICR. Responses to these comments are found above in Section III, Summary and Explanation of the Proposed Amendments to Subpart CC. OSHA considered them when it developed the revised ICR associated with the final rule.

Concurrent with publication of this final rule, the Department of Labor submitted the final ICR, containing the full analysis and description of the burden hours and costs associated with the final rule, to OMB for approval. A copy of this ICR is available at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201809-1218-001* (this link will become active on the day following publication of the final rule). OSHA will publish a separate notice in the **Federal Register** that will announce the results of OMB's review. That notice will also include a list of OMB-approved information collection requirements and total burden hours and costs imposed by the new standard. The Agency will also codify the OMB control number for the standard into § 1926.5, which is the central section in which OSHA displays its approved collection under the Paperwork Reduction Act.

Summary of Information Collection Requirements

This final rule establishes new information collection requirements. It also modifies a small number of information collection requirements in the Cranes and Derricks in Construction Standard (29 CFR part 1926, Subpart CC) Information Collection (IC) previously approved by OMB. If the new information collection requirements are approved by OMB, OSHA will request a second OMB approval to amend the comprehensive Cranes and Derricks in Construction Information Collection (OMB control number 1218–0261) to incorporate the ICR analysis associated with the final Cranes and Derricks in Construction Standard: Operator Qualification and to discontinue the new control number (1218–0270).

Below is a summary of the major differences in the information collection requirements contained in the revised rule from the information collection requirements previously approved in the ICR. Also, the summary includes a brief description of the significant changes between the proposal and the final rule's information collection requirements. These differences are discussed in more specific detail in Section III: Summary and Explanation of the Amendments to Subpart CC. The impact on information collection requirements is also discussed in more detail in Item 8 of the ICR.

Some of these adopted revisions resulted in changes to the previous burden hour and/or cost estimates associated with the current OMB-approved information collection requirements contained in the Cranes and Derricks in Construction Standard Information Collection. Others did not change burden hour or cost estimates, but would substantively modify language contained in the currently OMB-approved ICR. Still others revised previous standard provisions that are not information collection requirements. This summary addresses the first two categories to ensure that the ICR reflects the updated regulatory text, but does not address the last category of revisions. In addition, this summary does not address the provisions that are substantively unchanged from the current, OMB-approved information collection requirements. Discussion and justification of these provisions can be found in the preamble to the final 2010 crane rule (75 FR 48017) and also in the Supporting Statements for this final rule, as well as in the approved Information Collection.

Section 1926.1427(a)—Operator Training, Certification, and Evaluation

The introductory text in paragraph (a) sets out the employer's responsibility to ensure that each operator is certified/licensed in accordance with subpart CC, and is evaluated on his or her competence to safely operate the equipment that will be used, before the employer permits him or her to operate equipment covered by subpart CC without continuous monitoring. The revised approach provides a clearer structure than the previous standard, which was not designed to

[38] See *www.Regulations.gov*, docket numbers: OSHA–2018–0009–0003; OSHA–2018–0009–0004; and OSHA–2018–0009–0005.

accommodate both certification and evaluation.

Section 1926.1427(c)—Operator Certification and Licensing

Under paragraph (c), the employer must ensure that each operator is certified or licensed to operate the equipment. Paragraph (c) retains the certification and licensing structure of the previous standard with only a few minor modifications intended to improve comprehension of certification/licensing requirements. For example, OSHA removed the reference to an ''option'' with respect to mandatory compliance with existing state and local licensing requirements that meet the minimum requirements under federal law.

Section 1926.1427(d)—Certification by an Accredited Crane Operator Testing Organization

Revised paragraph (d) retains the requirements of previous paragraph § 1926.1427(b), except that the revision removes the requirement for certification by capacity of crane, as required in previous paragraphs (b)(1)(ii)(B) and (b)(2). The need for this change is explained in the ''Need for a Rule'' section of the preamble. The revised rule also makes some non-substantive language clarifications. Compliance with the requirements of revised paragraph (d) is the option that OSHA expects the vast majority of employers to use.

Section 1926.1427(e)—Audited Employer Program

The substantive content of revised paragraph (e) is the same as previous § 1926.1427(c). It sets out the parameters for a nonportable certification program administered by the employer and audited by a third party. The changes to the regulatory text for the audited employer program are to remove the word ''qualification'' and to replace three cross references with updated references to their new locations in the final rule.

Section 1926.1427(f)—Evaluation

Paragraph (f) sets out new specific requirements that employers must follow to conduct an operator evaluation and re-evaluation, including documentation requirements. Paragraph (f)(6) requires the employer to document the evaluation of each operator and to ensure that the documentation is available at the worksite while the operator is employed by the employer. OSHA is adding language to this final rule that states explicitly the documentation must be maintained while the operator is employed by the employer. This paragraph also specifies the information that the documentation needs to include: The operator's name, the evaluator's name and signature, the date of the evaluation, and the make, model and configuration of the equipment used in the evaluation. However, the documentation would not need to be in any particular format. The employer must make the document available at the worksite for the duration of the operator's employment.

The final rule also permits the employer to rely on its previous assessments of an operator employed by that employer prior to December 10, 2018, in lieu of conducting a new evaluation of that operator's existing knowledge and skills. Thus, for those operators assessed under this provision of the final rule, the evaluation documentation must reflect the date of the employer's determination of the operator's abilities and the make, model and configuration of equipment on which the operator has previously demonstrated competency. The proposed rule did not include the provisions permitting employers to rely on previous assessments of current employees in lieu of conducting new evaluations and the associated documentation.

Section 1926.1427(h)—Language and Literacy

Previous paragraph § 1926.1427(h) allowed operators to be certified in a language other than English, provided that the operator understands that language. Paragraph (h) in the final rule is nearly identical to previous paragraph (h) with the exception that it removes the reference to the previous qualification language in paragraph (b)(2), which has been replaced.

*Title of Collection:* Cranes and Derricks in Construction: Operator Qualification.

*OMB Control Number:* 1218–0270.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 119,904 (117,130 employers of operators and 2,774 employers of propane field technician officers).

*Total Estimated Number of Responses:* 102,144.

*Total Estimated Annual Time Burden Hours:* 7,173.

*Total Estimated Annual Other Costs (capital, operation and maintenance) Burden:* $84.

*D. Federalism*

OSHA reviewed the revisions to the cranes standard in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which 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 and statutory authority exists and the problem is national in scope. Executive Order 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 and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as ''State Plan States.'' 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 (29 U.S.C. 667).

OSHA previously concluded from its analysis for the 2010 final rule that promulgation of subpart CC complies with Executive Order 13132 (see 75 FR 48128–29). The amendments in this final rule do not change that conclusion. In States without an OSHA-approved State Plan, this revised rule will limit state policy options in the same manner as every standard promulgated by OSHA. But the revised rule also requires compliance with State and local crane operator licensing programs that meet certain minimum standards. Section 18 of the OSH Act, as noted in the previous paragraph, permits State-Plan States to develop and enforce their own cranes standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this final rule.

*E. State Plans*

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, State Plans must either amend their standards to be identical or ''at least as effective as'' the new standard or amendment, or show that an existing State standard covering this area is already ''at least as effective'' as the new Federal standard or amendment (29 CFR 1953.5(a)). State Plan adoption must be completed within six 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 Plans do not have to amend their standards, although OSHA may encourage them to do so. The 28 OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

The amendments to OSHA's cranes standard in this final rule require employers to permanently implement evaluations of crane operators, whereas the previous evaluation duty had been temporary with a fixed end date. These evaluations must be documented and include more specificity than the previous temporary employer duty to assess and train operators under § 1926.1427(k)(2). Accordingly, State Plans are required to adopt an ''at least as effective'' change to their standard.

OSHA is also removing the previous requirement for crane operators to be certified by crane capacity as well as crane type. Because this change removes a requirement rather than imposing one, State Plans are not be required to make this change, but may do so if they so choose.

*F. Unfunded Mandates Reform Act*

When OSHA issued the final Cranes and Derricks in Construction rule in 2010 (75 FR 47906), it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). OSHA concluded that the final rule did not meet the definition of a ''Federal intergovernmental mandate'' under the UMRA because OSHA standards do not apply to State or local governments except in States that voluntarily adopt State Plans. OSHA further noted that the 2010 rule imposed costs of over $100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but concluded that its 2010 final economic analysis met that requirement.

As discussed above in Section III.A (Final Economic Analysis and Regulatory Flexibility Analysis) of this preamble, this final rule has cost savings of approximately $1.8 million per year. Therefore, for the purposes of the UMRA, OSHA certifies that this final rule would 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) and determined that it will not have ''tribal implications'' as defined in that order. The final rule will 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. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

Consistent with E.O. 13771 (82 FR 9339, January 30, 2017), OSHA has estimated at a 3 percent discount rate, there are net annual cost savings of $1,752,000, and at a discount rate of 7 percent there is an annual cost savings of $2,388,000. This rule is an E.O. 13771 deregulatory action. Details on the estimated costs and cost savings estimates for this rule can be found in the final rule's economic analysis.

**List of Subjects in 29 CFR Part 1926**

Certification, Construction industry, Cranes, Derricks, Occupational safety and health, Qualification, Safety, Training.

Signed at Washington, DC, on November 5, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

For the reasons stated in the preamble of this final rule, OSHA is amending 29 CFR part 1926 as follows:

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

## Subpart CC—Cranes and Derricks in Construction

■ 1. The authority citation for subpart CC 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. 5–2007 (72 FR 31159) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 2. Revise § 1926.1427 to read as follows:

**§ 1926.1427 Operator training, certification, and evaluation.**

(a) *General requirements for operators.* The employer must ensure that each operator is trained, certified/licensed, and evaluated in accordance with this section before operating any equipment covered under subpart CC, except for the equipment listed in paragraph (a)(2) of this section.

(1) *Operation during training.* An employee who has not been certified/licensed and evaluated to operate assigned equipment in accordance with this section may only operate the equipment as an operator-in-training under supervision in accordance with the requirements of paragraph (b) of this section.

(2) *Exceptions.* Operators of derricks (see § 1926.1436), sideboom cranes (see § 1926.1440), or equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less (see § 1926.1441) are not required to comply with § 1926.1427. Note: The training requirements in those other sections continue to apply (for the training requirement for operators of sideboom cranes, follow section 1926.1430(c)).

(3) *Qualification by the U.S. military.* (i) For purposes of this section, an operator who is an employee of the U.S. military meets the requirements of this section if he/she has a current operator qualification issued by the U.S. military for operation of the equipment. An employee of the U.S. military is a Federal employee of the Department of Defense or Armed Forces and does not include employees of private contractors.

(ii) A qualification under this paragraph is:

(A) Not portable: Such a qualification meets the requirements of paragraph (a) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.

(B) Valid for the period of time stipulated by the issuing entity.

(b) *Operator training.* The employer must provide each operator-in-training with sufficient training, through a combination of formal and practical instruction, to ensure that the operator-in-training develops the skills, knowledge, and ability to recognize and avert risk necessary to operate the equipment safely for assigned work.

(1) The employer must provide instruction on the knowledge and skills listed in paragraphs (j)(1) and (2) of this section to the operator-in-training.

(2) The operator-in-training must be continuously monitored on site by a trainer while operating equipment.

(3) The employer may only assign tasks within the operator-in-training's ability. However, except as provided in paragraph (b)(3)(v) of this section, the operator-in-training shall not operate the equipment in any of the following circumstances unless certified in accordance with paragraph (c) of this section:

(i) If any part of the equipment, load line, or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone (see § 1926.1408(a)(1)), could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV.

(ii) If the equipment is used to hoist personnel.

(iii) In multiple-equipment lifts.

(iv) If the equipment is used over a shaft, cofferdam, or in a tank farm.

(v) In multiple-lift rigging operations, except where the operator's trainer determines that the operator-in-training's skills are sufficient for this high-skill work.

(4) The employer must ensure that an operator-in-training is monitored as follows when operating equipment covered by this subpart:

(i) While operating the equipment, the operator-in-training must be continuously monitored by an individual (''operator's trainer'') who meets all of the following requirements:

(A) The operator's trainer is an employee or agent of the operator-in-training's employer.

(B) The operator's trainer has the knowledge, training, and experience necessary to direct the operator-in-training on the equipment in use.

(ii) While monitoring the operator-in-training, the operator's trainer performs no tasks that detract from the trainer's ability to monitor the operator-in-training.

(iii) For equipment other than tower cranes: The operator's trainer and the operator-in-training must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signals. For tower cranes: The operator's trainer and the operator-in-training must be in direct communication with each other.

(iv) The operator-in-training must be monitored by the operator's trainer at all times, except for short breaks where all of the following are met:

(A) The break lasts no longer than 15 minutes and there is no more than one break per hour.

(B) Immediately prior to the break the operator's trainer informs the operator-in-training of the specific tasks that the operator-in-training is to perform and limitations to which he/she must adhere during the operator trainer's break.

(C) The specific tasks that the operator-in-training will perform during the operator trainer's break are within the operator-in-training's abilities.

(5) *Retraining.* The employer must provide retraining in relevant topics for each operator when, based on the performance of the operator or an evaluation of the operator's knowledge, there is an indication that retraining is necessary.

(c) *Operator certification and licensing.* The employer must ensure that each operator is certified or licensed to operate the equipment as follows:

(1) *Licensing.* When a state or local government issues operator licenses for equipment covered under subpart CC, the equipment operator must be licensed by that government entity for operation of equipment within that entity's jurisdiction if that government licensing program meets the following requirements:

(i) The requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(ii) The testing meets industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel.

(iii) The government authority that oversees the licensing department/office has determined that the requirements in paragraphs (c)(1)(i) and (ii) of this section have been met.

(iv) The licensing department/office has testing procedures for re-licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) For the purposes of compliance with this section, a license is valid for the period of time stipulated by the licensing department/office, but no longer than 5 years.

(2) *Certification.* When an operator is not required to be licensed under paragraph (c)(1) of this section, the operator must be certified in accordance with paragraph (d) or (e) of this section.

(3) *No cost to employees.* Whenever operator certification/licensure is required under this section, the employer must provide the certification/licensure at no cost to employees.

(4) *Provision of testing and training.* A testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable governmental or accrediting agency (in the option selected) for an organization providing both services are met.

(d) *Certification by an accredited crane operator testing organization.* (1) For a certification to satisfy the requirements of this section, the crane operator testing organization providing the certification must:

(i) Be accredited by a nationally recognized accrediting agency based on that agency's determination that industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel have been met.

(ii) Administer written and practical tests that:

(A) Assess the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(B) Provide certification based on equipment type, or type and capacity.

(iii) Have procedures for operators to re-apply and be re-tested in the event an operator applicant fails a test or is decertified.

(iv) Have testing procedures for re-certification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) Have its accreditation reviewed by the nationally recognized accrediting agency at least every 3 years.

(2) If no accredited testing agency offers certification examinations for a particular type of equipment, an operator will be deemed to have complied with the certification requirements of this section for that equipment if the operator has been certified for the type that is most similar to that equipment and for which a certification examination is available. The operator's certificate must state the type of equipment for which the operator is certified.

(3) A certification issued under this option is portable among employers who are required to have operators certified under this option.

(4) A certification issued under this paragraph is valid for 5 years.

(e) *Audited employer program.* The employer's certification of its employee must meet the following requirements:

(1) *Testing.* The written and practical tests must be either:

(i) Developed by an accredited crane operator testing organization (see paragraph (d) of this section); or

(ii) Approved by an auditor in accordance with the following requirements:

(A) The auditor is certified to evaluate such tests by an accredited crane

operator testing organization (see paragraph (d) of this section).

(B) The auditor is not an employee of the employer.

(C) The approval must be based on the auditor's determination that the written and practical tests meet nationally recognized test development criteria and are valid and reliable in assessing the operator applicants regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(D) The audit must be conducted in accordance with nationally recognized auditing standards.

(2) *Administration of tests.* (i) The written and practical tests must be administered under circumstances approved by the auditor as meeting nationally recognized test administration standards.

(ii) The auditor must be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization (see paragraph (d) of this section).

(iii) The auditor must not be an employee of the employer.

(iv) The audit must be conducted in accordance with nationally recognized auditing standards.

(3) *Timing of audit.* The employer program must be audited within 3 months of the beginning of the program and at least every 3 years thereafter.

(4) *Requalification.* The employer program must have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section. The re-qualification procedures must be audited in accordance with paragraphs (e)(1) and (2) of this section.

(5) *Deficiencies.* If the auditor determines that there is a significant deficiency (''deficiency'') in the program, the employer must ensure that:

(i) No operator is qualified until the auditor confirms that the deficiency has been corrected.

(ii) The program is audited again within 180 days of the confirmation that the deficiency was corrected.

(iii) The auditor files a documented report of the deficiency to the appropriate Regional Office of the Occupational Safety and Health Administration within 15 days of the auditor's determination that there is a deficiency.

(iv) Records of the audits of the employer's program are maintained by the auditor for 3 years and are made available by the auditor to the Secretary of Labor or the Secretary's designated representative upon request.

(6) *Audited-program certificates.* A certification under this paragraph is:

(i) Not portable: Such a certification meets the requirements of paragraph (c) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the certification.

(ii) Valid for 5 years.

(f) *Evaluation.* (1) Through an evaluation, the employer must ensure that each operator is qualified by a demonstration of:

(i) The skills and knowledge, as well as the ability to recognize and avert risk, necessary to operate the equipment safely, including those specific to the safety devices, operational aids, software, and the size and configuration of the equipment. Size and configuration includes, but is not limited to, lifting capacity, boom length, attachments, luffing jib, and counterweight set-up.

(ii) The ability to perform the hoisting activities required for assigned work, including, if applicable, blind lifts, personnel hoisting, and multi-crane lifts.

(2) For operators employed prior to December 10, 2018, the employer may rely on its previous assessments of the operator in lieu of conducting a new evaluation of that operator's existing knowledge and skills.

(3) The definition of ''qualified'' in § 1926.32 does not apply to paragraph (f)(1) of this section: Possession of a certificate or degree cannot, by itself, cause a person to be qualified for purposes of paragraph (f)(1).

(4) The evaluation required under paragraph (f)(1) of this section must be conducted by an individual who has the knowledge, training, and experience necessary to assess equipment operators.

(5) The evaluator must be an employee or agent of the employer. Employers that assign evaluations to an agent retain the duty to ensure that the requirements in paragraph (f) are satisfied. Once the evaluation is completed successfully, the employer may allow the operator to operate other equipment that the employer can demonstrate does not require substantially different skills, knowledge, or ability to recognize and avert risk to operate.

(6) The employer must document the completion of the evaluation. This document must provide: The operator's name; the evaluator's name and signature; the date; and the make, model, and configuration of equipment used in the evaluation. The employer must make the document available at the worksite while the operator is employed by the employer. For operators assessed per paragraph (f)(2) of this section, the documentation must reflect the date of the employer's determination of the operator's abilities and the make, model and configuration of equipment on which the operator has previously demonstrated competency.

(7) When an employer is required to provide an operator with retraining under paragraph (b)(5) of this section, the employer must re-evaluate the operator with respect to the subject of the retraining.

(g) [Reserved].

(h) *Language and literacy requirements.* (1) Tests under this section may be administered verbally, with answers given verbally, where the operator candidate:

(i) Passes a written demonstration of literacy relevant to the work.

(ii) Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification.

(2) Tests under this section may be administered in any language the operator candidate understands, and the operator's certification documentation must note the language in which the test was given. The operator is only permitted to operate equipment that is furnished with materials required by this subpart, such as operations manuals and load charts, that are written in the language of the certification.

(i) [Reserved].

(j) *Certification criteria.* Certifications must be based on the following:

(1) A determination through a written test that:

(i) The individual knows the information necessary for safe operation of the specific type of equipment the individual will operate, including all of the following:

(A) The controls and operational/performance characteristics.

(B) Use of, and the ability to calculate (manually or with a calculator), load/capacity information on a variety of configurations of the equipment.

(C) Procedures for preventing and responding to power line contact.

(D) Technical knowledge of the subject matter criteria listed in appendix C of this subpart applicable to the specific type of equipment the individual will operate. Use of the appendix C criteria meets the requirements of this provision.

(E) Technical knowledge applicable to the suitability of the supporting ground and surface to handle expected loads, site hazards, and site access.

(F) This subpart, including applicable incorporated materials.

(ii) The individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in paragraph (j)(1)(i) of this section.

(2) A determination through a practical test that the individual has the skills necessary for safe operation of the equipment, including the following:

(i) Ability to recognize, from visual and auditory observation, the items listed in § 1926.1412(d) (shift inspection).

(ii) Operational and maneuvering skills.

(iii) Application of load chart information.

(iv) Application of safe shut-down and securing procedures.

(k) *Effective dates.* (1) Apart from the evaluation and documentation requirements in paragraphs (a) and (f), this section is effective on December 10, 2018.

(2) The evaluation and documentation requirements in paragraphs (a) and (f) are effective on February 7, 2019.

■ 3. Amend § 1926.1430 by:

■ a. Revising paragraphs (c)(1) and (2);

■ b. Removing paragraph (c)(3); and

■ c. Redesignating paragraph (c)(4) as paragraph (c)(3).

The revisions read as follows:

**§ 1926.1430 Training.**

* * * * *

(c) * * *

(1) The employer must train each operator in accordance with § 1926.1427(a) and (b), on the safe operation of the equipment the operator will be using.

(2). The employer must train each operator covered under the exception of § 1926.1427(a)(2) on the safe operation of the equipment the operator will be using.

* * * * *

[FR Doc. 2018–24481 Filed 11–7–18; 4:15 pm]

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# FEDERAL REGISTER

Vol. 83 Friday,
No. 218 November 9, 2018

Part IV

## The President

Federal Register
Vol. 83, No. 218
Friday, November 9, 2018

# Presidential Documents

**Title 3—**

## The President

**Notice of November 8, 2018**

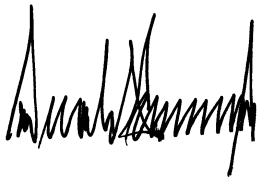
## Continuation of the National Emergency With Respect to Iran

On November 14, 1979, in Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran.

Our relations with Iran have not yet normalized, and the process of implementing the agreements with Iran, dated January 19, 1981, is ongoing. For this reason, the national emergency declared on November 14, 1979, and the measures adopted on that date to deal with that emergency, must continue in effect beyond November 14, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

The emergency declared in Executive Order 12170 is distinct from the emergency declared in Executive Order 12957 on March 15, 1995. This renewal, therefore, is distinct from the emergency renewal of March 12, 2018.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*November 8, 2018.*

[FR Doc. 2018–24808
Filed 11–8–18; 2:00 pm]
Billing code 3295–F9–P

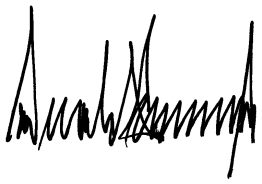
# Presidential Documents

**Notice of November 8, 2018**

## Continuation of the National Emergency With Respect to the Proliferation of Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, by Executive Order 13094, the President amended Executive Order 12938 to respond more effectively to the worldwide threat of proliferation activities related to weapons of mass destruction. On June 28, 2005, by Executive Order 13382, the President, among other things, further amended Executive Order 12938 to improve our ability to combat proliferation activities related to weapons of mass destruction. The proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 12938 with respect to the proliferation of weapons of mass destruction and the means of delivering such weapons must continue beyond November 14, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended by Executive Orders 13094 and 13382.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*November 8, 2018.*

[FR Doc. 2018–24810
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Billing code 3295–F9–P

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